

injunction would be.⁶³ Second, courts should provide interpretive weight to the number of states—as well as their geographical and partisan identities—deciding to join as co-parties or file amici in support of a particular position.⁶⁴ This consideration was given valuable stake in *South Carolina v. Katzenbach*.⁶⁵ There, the Court’s decision-making on whether to functionally issue a nationwide injunction against section 5 of the Voting Rights Act’s preclearance provisions featured an invitation to states to participate in the case. Ultimately, 26 states accepted the invitation, serving as evidence “that the questions presented were of urgent concern to the entire country.”⁶⁶ Lastly, courts should be wary of public officials’ claims to represent the state as a basis for receiving special solicitude. Disagreement among public officials regarding the faithful position of their citizenry should caution against extending such eased access to court.⁶⁷

At bottom, nationwide injunctions punctuate the pivot of states away from defending enclaves of local control to articulating their visions on the national stage. The injunctions themselves capture this development, initially serving as shields—such as with anti-suit injunctions—but now function as swords to invalidate a range of government statutes, regulations, and programs.⁶⁸ Enabling states to pursue entrepreneurial litigation and offer their own national solutions alongside the federal government conveys the consummation, not the obstruction, of a “double source of protection.”⁶⁹ Bridging what is local and national diffuses authority, invites

⁶³ Whether this takes the form of making the current process more rigid or integrating an implied fifth element to preliminary injunction analysis should be a topic for further investigation.

⁶⁴ See Mank & Solimine, *supra* note 21, at 1957.

⁶⁵ 383 U.S. 301 (1966).

⁶⁶ *Id.* at 307-08.

⁶⁷ See, e.g., *Feeney v. Com.*, 366 N.E.2d 1262, 1267 (1977) (affirming “the Attorney General’s authority to prosecute an appeal where he believes that important interests of the Commonwealth will be sacrificed if the State officers’ unwillingness to consent to appeal is permitted to prevail”).

⁶⁸ See Jonathan R. Nash, *State Standing for Nationwide Injunctions Against the Federal Government*, 94 NOTRE DAME L. REV. 1985, 1991 (2019).

⁶⁹ William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 498, 503 (1977).

iterative approaches to open questions, and helps to further accountability and compromise.⁷⁰ As a result, states should not give much purchase to the allegation that nationwide injunctions are a Trojan horse to project nationalist values, but instead flip the script and posit that they are a profoundly localist measure designed to limit central government control.⁷¹ If opponents of states exercising such outsized power are dissatisfied with this conclusion, perhaps their complaints lie not so much with our law than with the contestation at the heart of our politics.⁷²

⁷⁰ See Cristina M. Rodríguez, *Negotiating Conflict Through Federalism: Institutional and Popular Perspectives*, 123 YALE L.J. 2094, 2133 (2014); cf. Daphna Renan, *The Law Presidents Make*, 103 VA. L. REV. 805, 835–46 (2017).

⁷¹ Cf. David J. Barron, *Why (and When) Cities Have a Stake in Enforcing the Constitution*, 115 YALE L.J. 2218, 2222 (2006) (arguing that types of uncooperative federalism are unconvincing not when they are too localist but rather when they are not localist enough).

⁷² See Gerken, *supra* note 22, at 1722.

Applicant Details

First Name **Gabriela**
 Last Name **Monico Nunez**
 Citizenship Status **U. S. Citizen**
 Email Address gabriela.monico@yale.edu
 Address

Address
Street
111 Sachem Street
City
New Haven
State/Territory
Connecticut
Zip
06511

Contact Phone Number
510-529-6558

Applicant Education

BA/BS From **University of California-Berkeley**
 Date of BA/BS **December 2013**
 JD/LLB From **Yale Law School**
https://www.nalplawschools.org/content/OrganizationalSnapshots/OrgSnapshot_225.pdf
 Date of JD/LLB **May 22, 2024**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Yale Journal on Regulation**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Eskridge, William
william.eskridge@yale.edu
203-432-9056

Jolls, Christine
christine.jolls@yale.edu
203-432-1958

Wishnie, Michael
michael.wishnie@yale.edu
203 436-4780

Negron-Gonzales, Genevieve
gnegrongonzales@usfca.edu
510-593-8110

This applicant has certified that all data entered in this profile and any application documents are true and correct.

GABRIELA MONICO NUNEZ

111 Sachem Street, New Haven, CT, 06511 • gabriela.monico@yale.edu • 510.529.6558

June 12, 2023

Hon. John Walker, Jr.
Senior Judge
U.S. Court of Appeals for the Second Circuit
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510

Dear Judge Walker:

I am a rising third-year student at Yale Law School, and I am writing to apply for a clerkship in your chambers for the 2025-26 term or any term thereafter.

I would bring a unique perspective to this position due to my personal background. I am originally from El Salvador and immigrated to the United States at age 16. As a low-income, first-generation, and formerly undocumented student (I became a U.S. citizen in 2019), my lived experience and the experiences of similarly situated individuals shaped my understanding of how people who lack access to resources navigate the legal system. They also deepened my commitment to public service. After earning an undergraduate degree from UC Berkeley, I worked as an immigration paralegal for six years. I enrolled in law school thereafter, hoping to gain formal training in what I had long been doing for myself and others as an advocate.

My educational and professional experiences have positioned me to succeed as your judicial clerk. Before law school, my job required me to conduct legal research and write initial drafts of asylum briefs. At Yale Law School, I have further engaged with legal research and scholarship as a research and teaching assistant to Professor William Eskridge. Additionally, I have honed my analytical, research, writing, and oral advocacy skills through my involvement in the Worker and Immigrant Rights Advocacy Clinic (WIRAC). As part of my work with the clinic, I helped bring an action in federal court under the Federal Tort Claims Act; the clients are immigrant families that were separated at the U.S. border.

My application materials are enclosed. Professors William Eskridge, Christine Jolls, Genevieve Negrón-Gonzalez, and Michael Wishnie are submitting letters of recommendation on my behalf. Thank you for your time and consideration of my application.

Sincerely,

Gabriela Monico

Gabriela Monico Nuñez (“Gabi”)

GABRIELA MONICO NUNEZ

111 Sachem Street, New Haven, CT, 06511 • gabriela.monico@yale.edu • 510.529.6558

EDUCATION**YALE LAW SCHOOL**, New Haven, CTJ.D. *expected*, June 2024

- Honors: NAACP Legal Defense Fund's Earl Warren Scholar; Hispanic Scholarship Fund; Dorothy Weller P.E.O. (Philanthropic Educational Organization) Scholar
- Activities: *Yale Journal on Regulation* (Submissions Editor, Spring 2023-Present; Lead Editor, Fall 2021-Fall 2022); The Appellate Project (Fellow, Fall 2021-Spring 2023); Latinx Law Student Association (Board Member, Fall 2022-Spring 2023); First Generation Professionals (Board Member, Spring 2022)

UNIVERSITY OF CALIFORNIA, BERKELEY, Berkeley, CA

B.A., distinction and departmental honors, double major in Ethnic Studies and Chicano Studies, Dec. 2013

- Honors: American Cultures Undergraduate Research Prize; Cal Leadership Award
- Activities: Rising Immigrants Scholars through Education (Co-chair); Berkeley Student Cooperative (Board Member); *Nineteen Sixty-Nine, Ethnic Studies Journal* (Editor); UCLA Labor Center (Intern for California Domestic Worker Bill of Rights Campaign)
- Other: Teaching assistant for undergraduate immigration policy course; co-instructor of creative writing course

PROFESSIONAL EXPERIENCE**DEPARTMENT OF JUSTICE, CIVIL DIVISION – FEDERAL PROGRAMS**, Washington, D.C.*Summer Law Internship Program (SLIP)*, Aug. 2023 – Sept. 2023**WILLIAMS & CONNOLLY, LLP**, Washington, D.C.*Summer Associate*, June 2023 – Aug. 2023**MUNGER, TOLLES & OLSON LLP**, Los Angeles, CA, and San Francisco, CA*Touchback; Summer Associate – Litigation*, May 2023 – June 2023*Summer Associate – Litigation*, May 2022 – July 2022

- Researched arguments in response to a district attorney's denial of a request to furnish police misconduct records.
- Analyzed case law and statutes regarding offers of judgment in civil rights matters; drafted memorandum examining client's liability for costs and fees in the event of a grant or denial of summary judgment.
- Researched case law and drafted memorandum analyzing whether courts within the Ninth Circuit treat short seller reports as corrective disclosures in actions alleging securities fraud.

PROFESSOR WILLIAM ESKRIDGE, New Haven, CT*Research Assistant (RA)*, July 2022 – Nov. 2022; May 2023 – Present

- Research the Administrative Procedure Act's legislative history and stakeholders' attitudes before its enactment.
- Research recent scholarship on the Major Questions Doctrine; draft memorandum summarizing findings.
- Cite-check multiple academic articles and a book chapter.

WORKER AND IMMIGRANT RIGHTS ADVOCACY CLINIC, New Haven, CT*Law Student Intern*, Jan. 2022 – Present

- Represent immigrant families seeking damages in federal court under the Federal Tort Claims Act (FTCA); research case law and draft legal memoranda on the viability of FTCA claims; co-author complaint; appear in federal court for status conference; co-author opposition to motion to dismiss; co-lead strategy meetings.
- Represent Afghan national in affirmative asylum case.

PROFESSOR ROBERT HARRISON'S ADVANCED LEGAL WRITING COURSE, New Haven, CT*Teaching Assistant (TA)*, March 2023 – May 2023

- Met with and provided individualized feedback to eight law students working on a legal writing assignment, a memorandum; conferred with the professor about students' individual progress.
- Evaluated brief revision exercises.

Gabriela Monico Nunez

page 2

PROFESSOR WILLIAM ESKRIDGE'S STATUTORY INTERPRETATION COURSE, New Haven, CT*Teaching Assistant (TA)*, Jan. 2023 – May 2023

- Researched law review articles, case law, and legislative history; synthesized information and shared it with students in preparation for TA group discussions; facilitated TA group discussions.
- Assisted with drafting the final exam by researching federal statutes and their legislative history.
- Hosted TA office hours; provided pastoral support; hosted session in preparation for the final exam.

SUSMAN GODFREY LLP, Los Angeles, CA*Summer Associate – Litigation*, July 2022

- Reviewed, compiled, and synthesized relevant information from discovery responses, briefs, and pleadings.
- Researched litigation strategies of opposing counsel in high profile matter; drafted memorandum summarizing findings.

IMMIGRANT LEGAL DEFENSE, Oakland, CA*Paralegal*, July 2020 – Aug. 2021

- Completed petitions and wrote declarations for guardianship cases before California courts.
- Prepared applications for Special Immigrant Juvenile Status and Deferred Action for Childhood Arrivals (DACA).

LAW OFFICE OF HELEN LAWRENCE, Oakland, CA*Paralegal*, July 2015 – Dec. 2020

- Worked on cases of detained and non-detained immigrants; wrote declarations, researched country conditions, secured expert witnesses, and wrote first drafts of asylum briefs.
- Traveled to Texas (in 2015 and 2016) to provide free legal services to detained asylum-seeking women and children.
- Lobbied for immigrants' rights in Washington, D.C., through the American Immigration Lawyers Association.
- Ran free DACA renewal services program in 2017.
- Co-facilitated workshops on immigration law for local non-profits and educational pipeline programs.

EAST BAY SANCTUARY COVENANT, Oakland, CA*Paralegal*, Feb. 2015 – Aug. 2015

- Conducted legal intakes of unaccompanied minors in removal proceedings.
- Wrote declarations, researched country conditions, and compiled documents in support of asylum applications.

TRIO STUDENT SUPPORT SERVICES, Oakland, CA*Academic Mentor*, Aug. 2013 – May. 2015

- Helped community college students with their writing assignments and applications to transfer to four-year universities.
- Facilitated workshops and developed curricula on research, writing, and transferring to four-year universities.

UNIVERSITY OF SAN FRANCISCO, San Francisco, CA*Research Assistant*, Nov. 2014 – July 2015

- Assisted Prof. Genevieve Negron Gonzales with two research projects about undocumented students in California's Central Valley and at the University of San Francisco.

IGNITE CALIFORNIA, Oakland, CA*Paid Intern*, June 2013 – Aug. 2013

- Wrote lesson plans for girls' after-school program that aims to build political ambition and promote civic engagement.

PUBLICATIONS

Gabriela Monico, *Redefining Citizenship in the United States' Undocumented Immigrant Youth Movement*, in *WE ARE NOT DREAMERS: UNDOCUMENTED SCHOLARS THEORIZE UNDOCUMENTED LIFE IN THE UNITED STATES* 87 (Leisy Abrego & Genevieve Negron-Gonzales eds., 2020).

SKILLS & INTERESTS

Bilingual in English and Spanish; enjoy hiking, watching films, volunteering, and napping with 17-year-old dog (Kika).

YALE LAW SCHOOL

Office of the Registrar

**TRANSCRIPT
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Date Entered: Fall 2021

Candidate for: Juris Doctor MAY-2024

SUBJ NO. COURSE TITLE UNITS GRD INSTRUCTOR

Fall 2021

LAW 10001	Constitutional Law I: Group 4	4.00	CR	P. Kahn
LAW 11001	Contracts I: Section A	4.00	CR	S. Carter
LAW 12001	Procedure I: Section B	4.00	CR	J. Suk
LAW 14001	Criminal Law & Admin I: Sect C	4.00	CR	J. Whitman
	Term Units	16.00	Cum Units	16.00

Spring 2022

LAW 21027	Advanced Legal Research	2.00	H	J. Nann
LAW 21136	Employment and Labor Law	3.00	H	C. Jellis
	Substantial Paper			
LAW 21722	Statutory InterpretRegState	3.00	H	W. Eskridge
LAW 30127	Workers&ImmigrantRightsClinic	2.00	H	M. Ahmad, C. Flores, S. Zampierin, M. Wishnie
LAW 30128	Workers&ImmigrantRts:Fieldwork	2.00	H	M. Ahmad, M. Wishnie, C. Flores, S. Zampierin
	Term Units	12.00	Cum Units	28.00

Fall 2022

LAW 20032	Advanced Legal Writing	2.00	H	R. Harrison
LAW 20557	Torts and Regulation	3.00	P	D. Kysar
LAW 20611	Immigration Law	4.00	H	A. Kalhan
LAW 30127	Workers&ImmigrantRightsClinic	2.00	H	M. Ahmad, K. Tyrrell
LAW 30128	Workers&ImmigrantRts:Fieldwork	3.00	H	M. Ahmad, K. Tyrrell
	Term Units	14.00	Cum Units	42.00

Spring 2023

LAW 21068	Antitrust	4.00	H	G. Priest
LAW 21601	Administrative Law	4.00	P	N. Parrillo
LAW 21649	Topics:Behaviorallaws&Economics	2.00	H	C. Jellis
LAW 30129	Adv WIRAC Seminar	1.00	CR	M. Ahmad, K. Tumlin, M. Wishnie, K. Tyrrell
LAW 30130	Advanced WIRAC Fieldwork	2.00	H	M. Ahmad, K. Tumlin, M. Wishnie, K. Tyrrell
	Term Units	13.00	Cum Units	55.00

***** END OF TRANSCRIPT *****


Heath Abner

YALE LAW SCHOOL
P.O. Box 208215
New Haven, CT 06520

EXPLANATION OF GRADING SYSTEM

Beginning September 2015 to date

<u>HONORS</u>	Performance in the course demonstrates superior mastery of the subject.
<u>PASS</u>	Successful performance in the course.
<u>LOW PASS</u>	Performance in the course is below the level that on average is required for the award of a degree.
<u>CREDIT</u>	The course has been completed satisfactorily without further specification of level of performance. All first-term required courses are offered only on a credit-fail basis. Certain advanced courses are offered only on a credit-fail basis.
<u>FAILURE</u>	No credit is given for the course.
<u>CRG</u>	Credit for work completed at another school as part of an approved joint-degree program; counts toward the graded unit requirement.
<u>RC</u>	Requirement completed; indicates J.D. participation in Moot Court or Barrister's Union.
<u>T</u>	Ungraded transfer credit for work done at another law school.
<u>TG</u>	Transfer credit for work completed at another law school; counts toward graded unit requirement.
<u>EXT</u>	In-progress work for which an extension has been approved.
<u>INC</u>	Late work for which no extension has been approved.
<u>NCR</u>	No credit given because of late withdrawal from course or other reason noted in term comments.

Our current grading system does not allow the computation of grade point averages. Individual class rank is not computed. There is no required curve for grades in Yale Law School classes.

Classes matriculating September 1968 through September 1986 must have successfully completed 81 semester hours of credit for the J.D. (Juris Doctor) degree. Classes matriculating September 1987 through September 2004 must have successfully completed 82 credits for the J.D. degree. Classes matriculating September 2005 to date must have successfully completed 83 credits for the J.D. degree. A student must have completed 24 semester hours for the LL.M. (Master of Laws) degree and 27 semester hours for the M.S.L. (Master of Studies in Law) degree. The J.S.D. (Doctor of the Science of Law) degree is awarded upon approval of a thesis that is a substantial contribution to legal scholarship.

<i>For Classes Matriculating 1843 through September 1950</i>	<i>For Classes Matriculating September 1951 through September 1955</i>	<i>For Classes Matriculating September 1956 through September 1958</i>	<i>From September 1959 through June 1968</i>
80 through 100 = Excellent 73 through 79 = Good 65 through 72 = Satisfactory 55 through 64 = Lowest passing grade 0 through 54 = Failure	E = Excellent G = Good S = Satisfactory F = Failure	A = Excellent B = Superior C = Satisfactory D = Lowest passing grade F = Failure	A = Excellent B+ B = Degrees of Superior C+ C = Degrees of Satisfactory C- D = Lowest passing grade F = Failure
To graduate, a student must have attained a weighted grade of at least 65.	To graduate, a student must have attained a weighted grade of at least Satisfactory.	To graduate, a student must have attained a weighted grade of at least D.	To graduate a student must have attained a weighted grade of at least D.
<i>From September 1968 through June 2015</i>			
H = Work done in this course is significantly superior to the average level of performance in the School. P = Successful performance of the work in the course. LP = Work done in the course is below the level of performance which on the average is required for the award of a degree.	CR = Grade which indicates that the course has been completed satisfactorily without further specification of level of performance. All first-term required courses are offered only on a credit-fail basis. Certain advanced courses offered only on a credit-fail basis. F = No credit is given for the course.	RC = Requirement completed; indicates J.D. participation in Moot Court or Barrister's Union. EXT = In-progress work for which an extension has been approved. INC = Late work for which no extension has been approved. NCR = No credit given for late withdrawal from course or for reasons noted in term comments.	CRG = Credit for work completed at another school as part of an approved joint-degree program; counts toward the graded unit requirement. T = Ungraded transfer credit for work done at another law school. TG = Transfer credit for work completed at another law school; counts toward graded unit requirement. *Provisional grade.

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Official Academic Transcript of:
GABRIELA MONICO NUNEZ
Transcript Created: 26-Jan-2020



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University of California, Berkeley

Office of the Registrar
128 Sproul Hall #5404
Berkeley, CA 94720-5404

Walter Wong
Walter Wong, University Registrar

Name: Monico, Gabriela Denis
Birthdate: 08/16/1989

Test Credits

Test	Description	Earned
AP USGVPL	AP AM GOV POL	2.7
AP USHST	AP AM HIST	5.3
AP PSYCH	AP PSYCH	2.7
AP SPALNG	AP SPAN LANG	5.3
AP SPALIT	AP SPAN LIT	5.3
Test Credit Totals:		21.3

Degrees Awarded

Degree: Bachelor of Arts
Confer Date: December 20, 2013
College: College of Letters and Science
Degree: Distinction in General Scholarship
Honors: Honors in Chicano Studies
Major: Honors in Ethnic Studies
Minor: Minor in Education

Beginning of Undergraduate Coursework

Program: Undergrad Letters & Science
Major: Undeclared College of Letters and Science

Course	Title	Att	Earned	Grade	Points
ASTRON C10	GENERAL ASTRONOMY	4.0	4.0	P	0.00
CHICANO 24	FRESHMAN SEMINAR	1.0	1.0	P	0.00
CHICANO 98	SUPERV GROUP STUDY	2.0	2.0	P	0.00
COLWRIT R1A	COLLEGE WRITING 1A	6.0	6.0	A	24.00
Term GPA	4.000	Term Totals	13.0	13.0	6.0
		Att	Earned	Gr Units	Points
		13.0	13.0	6.0	24.00

2009 Spring

Program: Undergrad Letters & Science
Major: Undeclared College of Letters and Science

Course	Title	Att	Earned	Grade	Points
ANTHRO R5B	READING & COMP	4.0	4.0	B-	10.80
EDUC 97	FIELD STUDY	2.0	2.0	P	0.00
ITALIAN 1	ELEMENTARY ITALIAN	5.0	5.0	B-	13.50
PSYCH 1	GENERAL PSYCHOLOGY	3.0	3.0	B	9.00
Term GPA	2.775	Term Totals	14.0	14.0	33.30
Att	Earned	Gr Units	Points		
14.0	14.0	12.0	33.30		

2009 Fall

Program: Undergrad Letters & Science
Major: Undeclared College of Letters and Science

Course	Title	Att	Earned	Grade	Points
ETHSTD 97	FIELD STUDY	2.0	2.0	P	0.00
ETHSTD 135AC	U.S. IMMIGRATION	4.0	4.0	B	12.00
ETHSTD 136	IMMIGRANT WOMEN	4.0	4.0	A-	14.80
IAS 45	SURVY WORLD HISTORY	4.0	4.0	B	12.00
Term GPA	3.233	Term Totals	14.0	14.0	38.80
Att	Earned	Gr Units	Points		
14.0	14.0	12.0	38.80		

2010 Spring

Program: Undergrad Letters & Science
Major: Undeclared College of Letters and Science

Course	Title	Att	Earned	Grade	Points
CHICANO 159	MEXICAN IMMIGRATION	4.0	4.0	P	0.00
EDUC 191P	UNDOC STU & ED EQTY	3.0	3.0	A+	12.00
ETHSTD 11AC	THEORIES/CONCEPTS	4.0	4.0	B	12.00
ETHSTD 21AC	COMP SURV ETHNIC GR	4.0	4.0	A-	14.80
Term GPA	3.527	Term Totals	15.0	15.0	38.80
Att	Earned	Gr Units	Points		
15.0	15.0	11.0	38.80		



Office of the Registrar
128 Sproul Hall #5404
Berkeley, CA 94720-5404

University of California, Berkeley

Walter Wong
Walter Wong, University Registrar

Name: **Monico, Gabriela Denis**
Birthdate: **08/16/1989**

2010 Fall
Program: Undergrad Letters & Science
Major: Chicano Studies
Major: Ethnic Studies

Course	Title	Att	Earned	Grade	Points
ETHSTD	10AC HIST OF RACE WEST	4.0	4.0	A	16.00
ETHSTD	101A SOC SCI METHODS	4.0	4.0	A	16.00
ETHSTD	190 ADV SEM IN ETH STD	4.0	4.0	A+	16.00
SPANISH	25 READ AND ANALYSIS	3.0	3.0	A	12.00
Term GPA	4.000	Term Totals			

2011 Spring
Program: Undergrad Letters & Science
Major: Chicano Studies
Major: Ethnic Studies

Course	Title	Att	Earned	Grade	Points
CHICANO	20 INTRO CHICANO CULT	4.0	4.0	A	16.00
CHICANO	141 CHICANA FEM WRITERS	4.0	4.0	B+	13.20
ETHSTD	101B HUMANITIES METHODS	4.0	4.0	B	12.00
GWS	198 DIRECTED GROUP STDY	2.0	2.0	P	0.00
Term GPA	3.433	Term Totals			

2011 Fall
Program: Undergrad Letters & Science
Major: Chicano Studies
Major: Ethnic Studies

Course	Title	Att	Earned	Grade	Points
CHICANO	163 CARIBBEAN MIGRATION	4.0	4.0	A+	16.00
EDUC	288 INTERSECTIONS IN ED	3.0	3.0	A	12.00
ETHSTD	H196A ETH STD SR HONORS	3.0	0.0	IP	0.00
ETHSTD	190 ADV SEM IN ETH STD	4.0	4.0	A+	16.00
ETHSTD	198 SUPERV GROUP STUDY	2.0	2.0	P	0.00

Term GPA 4.000 Term Totals
Att 16.0 Earned 13.0 Gr Units 11.0 Points 44.00

2012 Spring
Program: Undergrad Letters & Science
Major: Chicano Studies
Major: Ethnic Studies

Course	Title	Att	Earned	Grade	Points
CHICANO	180 TOPICS IN CHIC STUD	3.0	3.0	A	12.00
EDUC	182AC POL EDUC INEQUALITY	4.0	4.0	A+	16.00
EDUC	198 DIRECTED GROUP STDY	1.0	1.0	P	0.00
ETHGRP	240 COMP THEO/METHODS	4.0	4.0	A	16.00
ETHSTD	H196B ETH STD SR HONORS	6.0	6.0	A	24.00
Term GPA	4.000	Term Totals			

2012 Fall
Program: Undergrad Letters & Science
Major: Chicano Studies
Major: Ethnic Studies

Course	Title	Att	Earned	Grade	Points
CHICANO	H195A CHICANO SR HONORS	3.0	0.0	IP	0.00
CHICANO	135A LATINO FILM TO 1980	4.0	4.0	A	16.00
EDUC	198 DIRECTED GROUP STDY	3.0	3.0	P	0.00
PBHLTH	116 SEM HLTH MED ISSUES	2.0	2.0	P	0.00
PHYSED	32 FITNESS: PHS ADA/EX	2.0	2.0	P	0.00
SOCIOL	190AC SEM/RES IN SOC/AC	4.0	4.0	A	16.00
Term GPA	4.000	Term Totals			

2013 Spring
Program: Undergrad Letters & Science
Major: Chicano Studies
Major: Ethnic Studies

Att	Earned	Grade	Points
14.0	14.0	12.0	41.20



University of California, Berkeley

Office of the Registrar
128 Sproul Hall #5404
Berkeley, CA 94720-5404

Walter Wong
Walter Wong, University Registrar

Name: Monico, Gabriela Denis
Birthdate: 08/16/1989

Course	Title	Att	Earned	Grade	Points
CHICANO	H195B CHICANO SR HONORS	6.0	6.0	A	24.00
CHICANO	135B CONTEMP LATINO FILM	4.0	4.0	A+	16.00
EDUC	197 FIELD STUDY	1.0	1.0	P	0.00
ETHSTD	122AC ETH/RACE IN AM FILM	4.0	4.0	A+	16.00
IAS	155AC EDUCATIONAL JUSTICE	3.0	3.0	A+	12.00
SPANISH	135 HISPANIC LITERATURE	3.0	3.0	A	12.00
Term GPA	4.000 Term Totals	21.0	21.0	20.0	80.00

Term Honor: Dean's List

2013 Summer

Program: Undergrad Letters & Science
Major: Chicano Studies
Major: Ethnic Studies

Course	Title	Att	Earned	Grade	Points
CHICANO	110 LATINA/O PHIL & REL	4.0	4.0	A+	16.00
CHICANO	135C LATINO DOC FILM	4.0	4.0	A	16.00
Term GPA	4.000 Term Totals	8.0	8.0	8.0	32.00

Undergraduate Career Totals					
Cum GPA	3.728	Cum Totals	187.3	181.3	132.0 492.10
08-10-10 REINSTATED TO FALL 2009					
01-18-11 REINSTATED TO FALL 2010					

End of UC Berkeley Undergraduate Coursework

TRANSCRIPT INFORMATION

Office of the Registrar
University of California
Berkeley, California 94720-5404

History

The University of California was created by an Act of the State Legislature in 1868, and classes have been given at Berkeley since 1873.

Units of Credit

Until September 1966, credits were recorded as semester units (hours). From September 1966 through summer 1983 credits were recorded as quarter units (hours). Beginning with the fall term, 1983, credits are recorded as semester units (hours). Quarter system requires 180 units for bachelor's degree. Semester system, 120.

Transfer Credit

Only credit that is accepted by the University is indicated on the transcripts of Berkeley students. Individual courses are not shown.

Examinations and credits accepted are indicated on the transcript in the same manner as transfer credit.

Course Numbering System

- 1 - 99 - Lower division courses
- 100 - 199 - Upper division courses
- 200 - 299 - Graduate courses
- 300 - 499 - Professional courses for teachers or prospective teachers
- 600 - 602 - Special Study

Grades of Scholarship

Grades

The work of all students on the Berkeley campus is reported in terms of the following grades:

- A - Excellent
- B - Good
- C - Fair
- D - Barely Passed
- F - Failure
- P - Passed at minimum level of C-
- NP - Not Passed
- S - Satisfactory or passed at a minimum level of B-
- U - Unsatisfactory
- I - Work incomplete, due to circumstances beyond the student's control, but of passing quality
- IP - Work in progress; final grade to be assigned upon completion of entire course sequence
- M - Temporary administrative grade; not included in grade point computation

The grades A, B, C, and D may be modified by plus (+) or minus (-) suffixes.

Grade Points

Grade points per unit are assigned as follows:

A=4, B=3, C=2, D=1, and F=none. When attached to the grades A, B, C, and D, plus (+) grades carry three-tenths of a grade point more per unit, and minus (-) grades carry three-tenths of a grade point less per unit than unmodified grades, except for A+, which carries 4.0 grade points per unit as does an A.

Courses graded P, NP, S, U, I, IP, or M are not used in computing the grade point average.

Academic Standing

Good Standing

Undergraduate: C average

Graduate: B average or better on all work attempted at any UC campus after a bachelor's degree.

Academic Probation

Undergraduate students are placed on academic probation if at the end of any term their cumulative grade point average is less than 2.0 (C average) computed on the total of all courses undertaken in the University. However, in the Colleges of Chemistry and Engineering, probation is determined on a term basis.

Credit Codes

Credit codes may determine the calculation of credit or annotate a course entry as follows:

Current Records System

Fall 1995 to Present

Note: An "I" assigned as of Fall 1973 to present is not included in grade point computation.

Pass/Fail Courses

PN - Course offered only on Pass/Not Pass basis
EPN - Undergraduate grading option Passed/Not Passed
ESU - Graduate grading option Satisfactory/Unsatisfactory
SUS - Graduate courses offered only on Satisfactory/Unsatisfactory basis

PN, EPN, ESU, SUS courses are not included in units ATTEMPTED or units PSSD (passed), but are included in CREDITS COMPLETED.

Prefixes

- C - Cross-listed
- H - Honors
- N - Summer course
- R - Reading & Composition
- W - On-line

Previous Record Systems

Prior to Fall 1975

Note: An "I" assigned prior to Fall 1973 is included in grade point computation as an F grade.

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June 08, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

**Re: Clerkship Application of Gabriela Monico Nunez,
Yale Law School Class of 2024**

Gabriela (Gabi) Monico Nunez, a rising third-year student at the Yale Law School, has asked me to write a letter in connection with her application for a clerkship with your Chambers at some point after she graduates in May 2024. I know Gabi as a student in my class introducing students to statutory interpretation, as an excellent research assistant, and as a teaching assistant in the statutory interpretation class.

I can recommend Gabi with great enthusiasm.

As you can see from her transcript and curriculum vitae, Gabi has been a serious student at the University of California, Berkeley, and now the Yale Law School. At the law school, she has been a leader in the Latinx Law Students Association and the First Generation Professionals. She has also been named an NAACP Legal Defense Fund's Earl Warren Scholar and a Dorothy Weller P.E.O. (Philanthropic Educational Organization) Scholar.

Additionally, she has already enjoyed enormous real world experience with the law. Before law school, she worked in a variety of organizations assisting immigrants, including asylum-seekers and others. In law school, she has worked very hard in our immigration clinic. This summer, she will be an intern at the Department of Justice and Williams & Connolly.

Finally, Gabi has compiled an exceptional grade record here at Yale Law (as she had at Berkeley). By my last count, she had 12 Honors and 2 Passes. She is taking tough courses like Statutory Interpretation and Antitrust and tough professors such as Christine Jolls.

The foregoing "formal" record understates the quality of what Gabi has accomplished and what she offers to you and to her country.

Gabi was born in strife-ridden El Salvador. Her mother is a survivor of the civil war in that country, and she brought Gabi and her siblings to this country when Gabi was sixteen. Living in poverty as an undocumented immigrant, and not speaking English, Gabi faced long odds in Azusa, California. Through hard work, she mastered the new language and earned a place at the University of California, where she graduated in 2013.

Between 2013 and 2021, when she entered Yale Law, Gabi worked as a paid intern and then a paralegal in offices helping and representing immigrants. In 2019, Gabi became an American citizen, and she has helped her parents and some of her siblings become lawful permanent residents in the United States.

Knowing about Gabi's background helps you appreciate the confidence I have in Gabi's abilities. She works harder than any other law student I know. She is selfless. She is devoted to the rule of law and appreciates American democracy more than most native-born citizens. She is generous. She is grateful. She is loving.

* * *

And she is a damn good law student. So more on that.

I first met Gabi Monico Nunez in Spring 2022, when she was a student in my course on Statutory Interpretation in the Regulatory State. This is a first-year preference course at the law school. For three credits, the course is a ton of work, because it has an ambitious set of goals: to introduce students to the constitutional and institutional framework of the modern regulatory state, as well as a thorough training in statutory interpretation and a baby introduction to administrative law. Over the years, the course has increasingly focused on doctrines, canons, and theories of statutory interpretation, typically as applied in Supreme Court or important agency cases. I hope you would agree that this agenda is essential material for modern lawyering and judging.

Gabi's Spring 2022 statutory interpretation class was intellectually and doctrinally intense. I organized the class better than I had done previously. With the aid of five teaching assistants, I was able to break out the students into smaller chat room groups on a regular basis, and in a few classes I spent hours meeting with the students myself in small groups. Generally, the students came to class ready to learn and often to debate Supreme Court analyses in cases like *Sweet Home*, *King v. Burwell*, and of course the recent debates in *Bostock*, *Niz-Chavez*, *NFIB v. OSHA*, *Epic Systems*, and other Supreme Court cases dominated by the instruments and canons associated with the new textualism—plenty of dictionaries, debates about grammar and ordinary-versus-legal meaning, Latin canons (like *noscitur a sociis*), and an alarming array of constitutional canons such as the major questions doctrine (aka anti-deference on steroids).

William Eskridge - william.eskridge@yale.edu - 203-432-9056

I demanded a ridiculous amount of work from the students for a three-credit course, as we covered tons of doctrine, the leading theories of statutory interpretation and the legislative process, and in-depth discussion of leading cases—including a few short writing assignments I required of all students. Although calm and modest, Gabi impressed me as a most serious student of statutes. Because she already knew a lot about statutory immigration law and its stakes for people, her attention was earnest and productive.

In any event, the final exam was the only basis for a grade in the course. Half of the exam consisted of issue-spotting questions based on Michigan's Elliott-Larsen Civil Rights Act of 1976, as frequently amended. The ELCRA is modeled on, and most of its provisions are borrowed from, Title VII of the Civil Rights Act of 1964 (as amended). The students had the borrowed statute rule under their belts, and were told that the Michigan Supreme Court majority follows the tenets of the new textualism. Hence, all the U.S. Supreme Court methodological rules and practices were relevant, as was Title VII case law sometimes.

My questions covered the map of statutory doctrine. The students had to grapple with word meaning, statutory structure, the interaction of different statutory schemes, agency deference or anti-deference, constitutional avoidance, and so forth. This was a very hard, demanding exam—and Gabi aced the nine issue-spotters in Question 1. She had one of the highest grades in the class on that, as well as on Questions 2 and 3. Question 2 was a legislative history exercise the students brought with them (500 word limit on their answer), and Question 3 was a 1000-word essay that the students also brought with them to the exam. Overall, Gabi easily earned an Honors for Statutory Interpretation in the Regulatory State!

* * *

Based on her performance on the exam, I asked Gabi to be my research assistant last summer and for Fall 2022. Because she was gainfully employed with law firm jobs last summer, Gabi was (like others I have retained) only able to work 5-10 hours most weeks. Yet she accomplished a lot:

- Cite-checking, proofing, and adding new sources to my co-authored article, "Textualism's Defining Moment," to be published in the Columbia Law Review.
- Impressive research for the theory chapter and the religion-vs-sexual minorities chapter of the new edition of my co-authored casebook on Sexuality, Gender and the Law.
- Compiling a massive legislative history of the APA § Researched, compiled, and reviewed the legislative history of the APA as well as news articles discussing the efforts to enact the APA. This was essential work for my co-authored article "The APA as a Super-Statute," to be published as part of an APA Symposium by the Notre Dame Law Review.

For every project, Gabi was careful to understand what I wanted her to do and what format would be easy for me to use! Accordingly, she created a Sharepoint and uploaded relevant documents and quotations there.

Gabi was an excellent RA—and then she applied to be a TA (teaching assistant) for the Spring 2023 Statutory Interpretation class. I eagerly recruited her (she had to retire as an RA). As a TA in the course, Gabi worked with other TAs and with me to develop a syllabus that would facilitate learning by the students—and of course I made sure that the syllabus covered the current as well as historical approaches to statutes. Ultimately, the new textualism was the centerpiece of the course; this meta-focus on text has its problems, as I have documented, but it is essential for any Article III judge and their Chambers to be on top of.

In addition, Gabi was the team leader for a section of students. For many class days, the students met in these smaller sections to discuss a statutory issue that they would then report on as a group. These TA break-outs made the class a much better learning experience, I believe, and I am certain that Gabi was the perfect team leader. She provided her students with extra context beforehand and counseled them on the course and adjusting to law school in one-on-one sessions.

Her performance in my class, as a research assistant, and as a teaching assistant provides strong evidence that Gabi Monico Nunez is a learned student of the law, a dedicated professional, an outstanding team player, and virtually a saint as a person. Honest to goodness, I cannot praise her character enough.

You cannot go wrong with this applicant. Hence, I am most enthusiastic in recommending Gabi Monico Nunez for a clerkship.

If I can be of further assistance, please email me or call my cell, 917 991 5914.

Very truly yours,

William N. Eskridge, Jr.
John A. Garver Professor of Jurisprudence Yale Law School

William Eskridge - william.eskridge@yale.edu - 203-432-9056

June 06, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I am writing to recommend Gabriela Monico Nunez, an extraordinarily talented Yale Law School student and NAACP Legal Defense Fund Earl Warren Scholar, for a clerkship in your chambers. Gabi is an incredibly compelling candidate whom I recommend to you with the greatest possible enthusiasm.

By way of background for this recommendation, I served as a law clerk myself both at the United States Court of Appeals for the District of Columbia Circuit and at the Supreme Court of the United States.

I know Gabi extremely well because she has been in two courses, Employment and Labor Law and a seminar, with me. She took Employment and Labor Law in her first year and wrote an outstanding end-of-term paper on how disparate impact liability under Title VII might have played out alongside the section 1981 claim brought against Proctor and Gamble for excluding Deferred Action for Childhood Arrivals (DACA) recipients from its internship program. A few things were clear from Gabi's work on this paper. First, Gabi is extremely bright; she is both a powerful and a precise legal thinker. Second, she is an excellent writer – clear, organized, careful, and engaging all at once. Third, she is both an incredibly efficient and an amazingly hard worker – a great and not extremely common combination. Fourth, she is wonderfully collaborative. In every discussion I have had with her over her time in law school, I have learned from her intellectually while also feeling confident that she is fully, and with ease, absorbing what I have to say.

She was in a small seminar with me this year, and her end-of-term paper displayed the same four traits as above but in even stronger form. I was particularly struck by the combination of clear power and unerring precision in her thinking, as well as by the way in which she is somehow a student who works incredibly efficiently and a student who puts in a huge number of hours and what a mighty combination that is.

I adore Gabi as a person. She is authentic, committed, and just all-around wonderful. I am completely confident that she would get along extremely well with everyone in chambers.

For all of these reasons, I recommend Gabi to you with the greatest possible enthusiasm. I hope that you will not hesitate to contact me, or have anyone from your chambers contact me, at christine.jolls@yale.edu or 203-432-1958 if there is any additional information I might be able to provide in connection with your consideration of her application.

Sincerely,

Christine Jolls
Gordon Bradford Tweedy Professor
Yale Law School
christine.jolls@yale.edu
(203) 432-1958

Christine Jolls - christine.jolls@yale.edu - 203-432-1958

June 12, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I write in enthusiastic support of the application of Gabriela Monico, a rising third-year student at Yale Law School, for a clerkship in your chambers. Gabi is an extraordinary young woman.

Gabi was born in El Salvador and lived there until she was 16, when she came to the United States as an undocumented immigrant who spoke no English. Gabi's childhood was difficult. She attended ten schools in eleven years, one of five children raised in five different households due to poverty and challenging family relationships. Her father is indigenous (Mayan) and her mother, who cannot read or write, was a survivor of the Salvadoran Civil War. Gabi continued to experience intense poverty after she came to the United States and all the hardships of being undocumented, as well as family violence at home and teachers in her public high school who tried to hold her back in remedial classes. Nevertheless, Gabi excelled in school and earned a spot at the University of California – Berkeley. Neither parent helped pay for college, and Gabi was ineligible for financial aid due to her immigration status; she worked multiple jobs and experienced periods of homelessness while a student, and at other times had to commute four hours daily between school and shelter. Somehow, she was able to earn her undergraduate degree. Unable to work lawfully when she graduated, she survived in independent contractor positions until, eventually she obtained permanent resident status. She then spent a number of years as a paralegal for an immigration attorney.

Gabi arrived at Yale Law School in fall 2021. The intellectual abilities, discipline, work ethic, drive, and personal qualities that made that last sentence possible are rare, even in a law school so full of accomplished students. I met Gabi in her first semester, when she attended a dinner for first-generation students at my home, and she has been a student in the Worker & Immigrant Rights Advocacy Clinic for the past three semesters. She is brilliant, reflective, hard-working, and kind, and I'm delighted to recommend her.

In one matter, Gabi helped to research, draft, and file federal tort litigation in two family separation cases. Pursuant to the Trump Administration's notorious policy, in summer 2018 two children were separated from their parents in Texas and brought to Connecticut, while their asylum-seeking parents remained in detention at the border. Earlier students had won an order to reunite each child with each parent, *J.S.R. by and through J.S.G. v. Sessions*, 330 F.Supp.3d 731 (D.Conn. 2018), prompting their release and resettlement in Connecticut, and had filed administrative claims under the Federal Tort Claims Act (FTCA). When nation-wide negotiations to settle the tort claims of separated families broke down in late 2021, we had no choice but to proceed to litigation.

Over the course of 2022, Gabi and her partners mastered a voluminous record of prior immigration proceedings, habeas litigation, and medical history for the four clients. She then interviewed the clients and evaluated not only theories of FTCA liability, but also possible *Bivens* and Alien Tort Statute claims. Finally, Gabi helped draft a forty-page federal complaint, one that reflected careful and often difficult judgments about legal theories, anticipated defenses, and potential discovery. Her research ranged from state tort law to federal jurisdiction to international law, and over a wide array of procedural and substantive matters. We filed the case in summer 2022. *Flores Benitez v. Miller*, No. 3:22-cv-00884-JCH (D.Conn.). When Gabi returned to campus in the fall, she led the team in figuring out how to serve the individual defendants, including Jeff Sessions and Stephen Miller; developing a discovery plan and managing multiple court conferences; and drafting part of a brief in opposition to the government's motion to dismiss. She even had her first appearance in federal court, handling one of the status conferences. Gabi did an extraordinary job in helping to steer the team through this process, consulting with other lawyers handling similar cases, and in drafting and revising pleadings and briefing. She repeatedly brought her powerful research and analytic skills to bear on novel and difficult questions.

This spring, Gabi chose to rotate off *Flores Benitez*, instead taking on the representation of a recent Afghan refugee. She completed numerous memos on her client's eligibility for work authorization, compiled country conditions reports, and authored a portion of the brief we submitted in support of the client's asylum application. Gabi also interviewed and prepared her client for his asylum interview last month. She did an excellent job, and we now await decision.

In a third matter, Gabi represented New Haven Rising, a local racial justice organization, in drafting a neighborhood survey to identify community needs and preferences in allocating new funding received by the City of New Haven from federal pandemic relief, state tax re-allocations, and an increased voluntary contribution from Yale University. Gabi canvassed in New Haven neighborhoods, interviewed community members, and helped draft testimony for residents for New Haven Board of Alders meetings. She also authored part of a memo recommending how the city might fairly and equitably allocate its new funds, in a manner responsive to identified community needs.

Finally, Gabi handled one other matter, which I did not supervise directly. In this, she represented UNITE HERE Local 217, a union of hotel and hospitality workers, completing multiple research memos related to workplace violations and corporate structures at two New Haven hotels in the midst of union organizing drives.

Across all of these matters, Gabi's legal research and writing has been outstanding. She is also a patient collaborator with clients, allies, local officials, and student teammates. She is extremely smart, thoughtful, and kind. She can complete enormous amounts

Michael Wishnie - michael.wishnie@yale.edu - _203_ 436-4780

of work with swiftness and care. She will be an outstanding law clerk, and I'm thrilled to recommend her to you.

Sincerely,

/s/ Michael J. Wishnie

Michael J. Wishnie

Michael Wishnie - michael.wishnie@yale.edu - _203_ 436-4780

UNIVERSITY OF SAN FRANCISCO School of Education

Genevieve Negrón Gonzales, Ph.D.
Associate Professor
University of San Francisco
School of Education
2130 Fulton Street
San Francisco, California 94117

June 9, 2023

Dear Judge,

It is an absolute honor to write a letter of recommendation for Gabriela Monico Nunez. She is one of the most impressive students I have ever taught in my 17 years of university-level teaching. I have known her for more than 15 years in a variety of capacities; she is a former student, served as a teaching assistant for a class I taught, worked as my research assistant, and is a contributing author to an award-winning book for which I serve as co-editor. Gabriela is undoubtedly in the top 1% of students I have ever had the opportunity to teach, and I enthusiastically and unequivocally support her application to clerk in your chambers.

I am a Professor of Education who has spent the last 17 years researching and writing about issues related to the rights of undocumented students. I first met Gabriela in 2009, when she was a new student leader on the UC Berkeley campus, championing the rights of undocumented students on that campus and more broadly in California's budding undocumented student movement. Though Gabriela was new to the UC Berkeley campus, she was recognized early on as a leader by her peers. When Gabriela enrolled in my course the following Spring, in 2010, I got to know her not just as a thoughtful and passionate student activist, but as a promising scholar and thought leader. I was so impressed by Gabriela, in fact, that when I taught a related class focused on educational justice and immigrant communities three years later, I selected her to serve as a Chancellor's Public Fellow and to work with me as a teaching assistant and coordinator for the "engaged scholarship" component of the class. This was a rare honor for an undergraduate student – most fellows were UC Berkeley graduate students. In this capacity, Gabriela coordinated and led a group of 15 undergraduate students in semester-long internship placements in community organizations around the Bay Area working on immigrant rights issues. I chose to work with Gabriela because I knew her maturity, skill, and impeccable reputation in the Bay Area immigrant rights movement would make her far more suitable for this position than many advanced doctoral students. I no longer work at UC Berkeley but have remained so impressed by the quality and depth of Gabriela's work that I brought her in to work with me as a research assistant at the University of San Francisco. Lastly, a few years ago my colleague Leisy Abrego (UCLA) and I began to work on an edited book that would showcase the important theoretical and empirical work done by undocumented (or formerly undocumented) scholars. We immediately reached out to Gabriela, convinced that a chapter based on her outstanding undergraduate thesis would serve as an anchor for the book; she worked tirelessly on this contribution, thoughtfully attending to the critiques and feedback raised in the peer review process. The result of this is her stellar chapter in a book by Duke University Press, titled *We Are Not Dreamers: Undocumented Scholars Theorize Undocumented Life in the United States*. The book won an International Latino Book Award in the multi-author, non-fiction category in 2021 and we have heard from numerous colleagues around the country that Gabriela's chapter has been taught in their classrooms across a variety of disciplines and institutions.

It is not only Gabriela's outstanding service to the undocumented youth movement that makes her stand out, it is also her personal story which fuels this passion for social justice and has made her into the impressive leader she is. What is so amazing about Gabriela is not simply her level of academic achievement – and it is worth saying that the quality of her scholarship and analysis rivals many of the doctoral students I have worked with – but the fact that she is not satisfied by these personal accomplishments. Gabriela has oriented her life to advancing the struggle for immigrant rights, through her involvement with various community-based immigrant rights organizations, her own academic scholarship, and her professional life. Her commitment is palpable and proven, and I have no doubt that she will continue to make an impact on these issues in an impressive manner.

Gabriela is poised, thoughtful, well-spoken, and articulate. She is passionate, bright, and talented. She is the sort of student teachers feel grateful to have in the classroom. She is the sort of leader who immediately garners the respect and admiration of her peers. She makes critical interventions, asks sharp questions, and makes space for the leadership of others. Her work is rooted in a strong, critical analysis, and in grounded, proven experience.

Gabriela has not had an easy path to the legal profession. Neither of her parents went to college. Her mother, a Salvadoran Civil War survivor, is illiterate. At age 16, Gabriela immigrated to the United States from El Salvador not speaking English. After arriving in this country, she reunited with her family. Acclimating to a new country was no easy feat for Gabriela. She and her family members were undocumented and low-income; they lived in an RV, had no access to health insurance, and struggled to make ends meet. Despite those barriers, Gabriela excelled academically and in the span of a semester went from being an English language learner to an honors student. Her hard work paid off and she attended UC Berkeley after graduating high school. In college, however, she had no access to financial aid (due to her formerly undocumented status) or help from her family; she had to work while going to school. She also commuted four hours during her first year and experienced housing instability; at one point, she slept in a student office at the UC Berkeley campus for a few months because she was homeless. After graduation, she continued experiencing hardships because she was ineligible for the Deferred Action for Childhood Arrivals Program (DACA). However, she eventually became a Lawful Permanent Resident and a U.S. citizen; this allowed her to access opportunities and help her family successfully navigate the immigration system.

Despite having had a difficult life, Gabriela has not let the obstacles in her way hold her back. On the contrary, she has overcome these obstacles and committed herself to assisting others in doing so, too. Gabriela has already achieved so much, but I am confident that she will amaze me even more in the future.

As someone who has seen Gabriela develop over the past decade, I have been excited to see her attending Yale Law School and taking the next step to fulfill the professional aspiration she has held tight to since I first met her as a college freshman. Her plans include becoming a litigator, so she would tremendously benefit from a clerkship in your chambers. Besides her impressive credentials, she will bring an invaluable perspective to your team. I am confident in asserting that Gabriela is among the very finest of those applying to clerk in your chambers.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Genevieve Negrón-Gonzales, Ph.D.
Professor, School of Education
University of San Francisco
GNegronGonzales@usfca.edu

GABRIELA MONICO NUNEZ

111 Sachem Street, New Haven, CT, 06511 • gabriela.monico@yale.edu • 510.529.6558

WRITING SAMPLE

I drafted the attached writing sample as an assignment in my Advanced Legal Writing course. The assignment required writing a closed-universe legal memorandum on an issue growing out of a dispute between a foreign seller and an American purchaser of a diesel engine, generator, and supporting equipment. The memorandum analyzes whether the transaction between the parties is governed by Article 2 of the Uniform Commercial Code (as adopted by Illinois). The analysis and writing are substantially my own, including revisions based on feedback that my professor provided. The memorandum has not been edited by others.

PRIVILEGED AND CONFIDENTIAL/ATTORNEY WORK PRODUCT/ATTORNEY-CLIENT COMMUNICATION

MEMORANDUM

To: Emilia Rodriguez, Supervising Attorney
From: Gabriela Monico Nuñez
Date: May 10, 2023
Re: Assessing whether the Illinois Commercial Code applies to Cax's agreement

I. QUESTION PRESENTED

Our client, German company Cax, entered into the Hawaii Cogeneration Agreement (the "Agreement") with a subsidiary of Leo Laboratories ("Leo"). Leo is a pharmaceutical company headquartered in Illinois, and its subsidiary operates a manufacturing plant in Honolulu, Hawaii. In the Agreement, Cax agreed to sell Leo a diesel engine, generator ("diesel generator"), and auxiliary equipment (together with the diesel generator, the "Equipment"), for Leo's plant. As part of the transaction, Cax had to design, fabricate, test, deliver, and install the Equipment. Leo and Cax chose Illinois law to govern the Agreement, and Article 2 of the Illinois Commercial Code ("ICC") governs transactions predominantly in goods, but not services. Does the Agreement fall under Article 2 of the ICC?

II. BRIEF ANSWER

The transaction between Cax and Leo is likely to fall under Article 2 of the ICC. The Equipment, which is a central part of the Agreement, is a "good" as defined by the ICC. Although the Agreement mixes the sale of a good with the provision of services, its predominant purpose is the sale of the Equipment.

III. STATEMENT OF ASSUMED FACTS

Leo is invoking the Agreement's arbitration clause to seek damages for costs it incurred due to problems with the Equipment it purchased from Cax, our client. In 1982, Cax agreed to sell Leo the Equipment for the cogeneration facility that Leo was constructing in Honolulu,

PRIVILEGED AND CONFIDENTIAL/ATTORNEY WORK PRODUCT/ATTORNEY-CLIENT COMMUNICATION

Hawaii. Leo's Proposed Statement of Undisputed Facts ("Exh. 1") at 4-6; Hawaii Cogeneration Agreement ("Exh. 2") at 1. Cax and Leo chose Illinois law to govern the transaction. Exh. 1 at 9. The Agreement, which repeatedly refers to Leo as "Purchaser" and Cax as "Seller," states that Cax "shall design, fabricate, test, deliver to purchaser's site, provide technical guidance and assistance for installation and start-up, and sell the Equipment." Exh. 2 at 2. A subsequent Contract Change Order shifted the responsibility to install the machine from Leo to Cax. Exh. 1 at 15.

The Agreement has several express warranties: (1) The Equipment will be free from defects for 12 months after acceptance; (2) Cax will fabricate the Equipment according to a set of specifications; and (3) if a warranty defect arises, Cax's service representatives will be available to help within 24 hours after Leo reports the problem. Exh. 2 at 11.

The Agreement states that Cax is responsible for developing the final design of the Equipment and that it should keep Leo apprised of the status of the design. Exh. 2 at 5. The parties agreed to have a design conference 45 days after the signing of the Agreement. Id. The specifications, laid out in Exhibit A of the Agreement, establish performance standards for the Equipment. Id. at 12.

In June 1983, Cax shipped and delivered the Equipment to Leo's Hawaii plant. Id. at 15. Cax then trained Leo's employees on how to operate and maintain the Equipment. Id. Title to the Equipment passed to Leo upon delivery. Exh. 1 at 15; Exh. 2 at 7. No sales taxes were added to the purchase price in the Agreement. Exh. 2 at 3. Leo, however, was responsible for "all taxes, charges, import, duties, assessments, or other charges lawfully levied or assessed by Hawaii." Exh. 2 at 14. By December 1983 Cax had installed the Equipment. Exh. 1 at 15.

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IV. APPLICABLE STATUTES**1. 810 Ill. Comp. Stat. 5/2-102 (2022). Scope Certain Security and Other Transactions Excluded from This Article**

[T]his Article applies to transactions in goods

2. 810 Ill. Comp. Stat. 5/2-105 (2022). Definitions: Transferability: “Goods”; “Future” Goods; “Lot”; “Commercial Unit”

(1) “Goods” means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are “future” goods. A purported present sale on future goods or of any interest therein operates as a contract to sell.

3. 810 Ill. Comp. Stat. 5/2-106 (2022). Definitions: “Contract”; “Agreement”; “Contract for sale”; “Sale”; “Present Sale”; “Conforming” to Contract; “Termination”; “Cancellation”

A “sale” consists in the passing of title from the seller to the buyer for a Price

4. 810 Ill. Comp. Stat. 5/2-501 (2022). Insurable interest in Goods; Manner of Identification of Goods

In the absence of explicit agreement identification occurs

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods . . . , when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

Official Comment: [I]n the ordinary case identification of particular existing goods as goods to which the contract refers is unambiguous and may occur in one of many ways. It is possible, however, for the identification to be tentative or contingent. In view of the limited effect given to identification by this Article, the general policy is to resolve all doubts in favor of identification

PRIVILEGED AND CONFIDENTIAL/ATTORNEY WORK PRODUCT/ATTORNEY-CLIENT COMMUNICATION

V. DISCUSSION

Article 2 of the ICC applies to “transactions in goods.” 810 Ill. Comp. Stat. 5/2-102 (2022). To determine if Article 2 applies to the Agreement, the arbitration panel will first have to analyze whether the Equipment meets the code’s definition of “goods.” If it does, the arbitration panel will then examine whether the transaction is predominantly for the sale of the Equipment or for the provision of the various services that the Agreement required Cax to provide.

a. Prong 1: Is the Equipment a “Good” under the ICC?

The ICC defines “goods” as “all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale” 810 Ill. Comp. Stat. 5/2-105 (2022). Courts applying Illinois law have held that the “coverage of ‘goods’ . . . should be viewed as being broad in scope so as to carry out the underlying purpose of the Code of achieving uniformity in commercial transactions.” Pittsburgh-Des Moines Steel Co. v. Brookhaven Manor Water Co., 532 F.2d 572, 580 (7th Cir. 1976). See also Republic Steel Corp. v. Pa. Eng'g Corp., 785 F.2d 174, 181 (7th Cir. 1986) (“[W]e may not be unmindful of Illinois law underscoring the broad coverage of the U.C.C. and emphasizing the need for uniformity in commercial transactions.”).

The ICC distinguishes between present goods, which exist at the time of the transaction, and future goods, which are not yet in existence at that time. The Equipment did not exist when the parties signed the Agreement. Future goods, like the Equipment, become identifiable to the contract when they are “shipped, marked or otherwise designated by the seller as goods to which the contract refers.” 810 Ill. Comp. Stat. 5/2-501 (2022). Here, Cax shipped the components of the Equipment to Leo’s plant in Honolulu, Hawaii. No later than at that moment, the Equipment

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was both movable and identifiable, and therefore satisfied the definition of goods under Article 2 of the ICC.

A product that later becomes immovable following assembly and installation can still qualify as a good under Article 2. See Meeker v. Hamilton Grain Elevator Co., 442 N.E.2d 921, 923 (Ill. App. Ct. 1982). In Meeker, the plaintiff argued that movable steel pieces of grain bins were not identifiable until they were assembled and attached to concrete pads. Id. The plaintiff contended that Article 2 did not govern the contract because once the bins became identifiable, they would no longer be movable. Id. The court rejected the plaintiff's argument and held that the product was identifiable before the steel pieces were assembled into unmovable bins. Id. Like the steel pieces in Meeker, the Equipment's components were identifiable even though they would no longer be movable once assembled and installed. Therefore, the Equipment meets Article 2's definition of a good.

b. Prong 2: What is the predominant purpose of the transaction?

Although the Equipment is a good under Article 2 of the ICC, the Agreement also requires Cax to provide a variety of services. When Illinois courts determine whether Article 2 applies to a mixed contract for goods and services, they apply a predominant purpose test:

The test for inclusion or exclusion is not whether [the contracts] are mixed, but, granting that they are mixed, whether their predominant factor, their thrust, their purpose, reasonably stated, is the rendition of service, with goods incidentally involved (*e.g.*, contract with artist for painting) or is a transaction of sale, with labor incidentally involved (*e.g.*, installation of a water heater in a bathroom).

Meeker v. Hamilton Grain Elevator Co., 442 N.E.2d 921, 922 (Ill App. Ct. 1982) (quoting Bonebrake v. Cox, 499 F.2d 951 (8th Cir. 1974)). Accord Tivoli Enter. v. Brunswick Bowling & Billiards Corp., 646 N.E.2d 943, 947 (Ill. App. Ct. 1995) ("Illinois courts, including this court, have repeatedly found that the test for the applicability of the UCC to a contract for the sale of

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goods and for services is whether the predominant purpose of the contract is for services or for the sale of goods.”). When applying the test, courts focus on several factors: (1) how the contract refers to the parties; (2) whether the transaction included a transfer of title; (3) whether the contract contains warranties; (4) whether the transaction includes a sales tax; and (5) how extensive and individualized the design involving the purchase is.

i. How does the Agreement refer to the parties?

Courts in Illinois have looked at how parties are denominated in a contract to assess the predominant purpose of the transaction they entered into. Meeker, 442 N.E.2d at 923; Nitrin, Inc. v. Bethlehem Steel Corp., 342 N.3.2d 65, 78 (Ill. App. Ct. 1976). If a contract refers to one party as “purchaser” and the other as “seller,” those titles signal that the sale of goods was predominant. See, e.g., Meeker, 442 N.E.2d at 923 (finding that a contract for the sale of grain bins was for goods in part because the parties were denominated throughout the contract as “seller” and “purchaser”). In contrast, if one party is labeled as “owner” and the other as “contractor,” those titles signal that the sale of services was predominant. See, e.g., Nitrin, 342 N.E.2d at 78 (finding that a contract for the construction of a converter, a key component of an ammonia plant, was for services in part because the parties were denominated as “owner” and “contractor”).

Like the Meeker contract, the Agreement refers to Leo as “purchaser” and “Cax” as seller. These labels strongly suggest that the transaction was predominantly for the sale of goods.

ii. Did the Agreement provide for a transfer of title between the parties?

Article 2 of the ICC defines a sale as “the passing of title from the seller to the buyer for a price.” 810 Ill. Comp. Stat. 5/2-106 (2022). When a contract transfers title to a good from the seller to the purchaser, the transaction is likely for the sale of goods. Cf. Nitrin, 342 N.3.2d at 78

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(holding that Article 2 did not govern a contract in which the contractor never transferred title to a converter and instead arranged for the owner to purchase it from a third party).

Unlike the Nitrin contract, the Agreement specifies that title to the Equipment would pass to Leo upon its delivery at Leo's facility in Hawaii. This title transfer likely signals that the predominant purpose of the Agreement was the sale of a good.

iii. Does the Agreement contain warranties?

Another factor that courts examine is whether contracts contain warranties. If a contract contains warranties on goods, the transaction is predominantly for the sale of goods. Tivoli Enter., 646 N.E.2d at 948 (underscoring that services were incidental partly because the contract's one-year warranty ran to the goods involved in the transaction). Accord, Bonebrake, 499 F.2d at 958 ("[Plaintiff] warranted that the lanes would be 'free from defects in workmanship and materials' [T]he language thus employed is that peculiar to goods, not services.").

Like the contracts in Tivoli Enter. and Bonebrake, the Agreement contains the following warranties on the good: (1) the Equipment will be free from defects for 12 months after acceptance, and (2) Cax will fabricate the Equipment according to a set of agreed-upon specifications. These warranties suggest that the Agreement's predominant purpose was the sale of a good.

Unlike the contract in Tivoli Enter., however, the Agreement also contains warranties on services: If a warranty defect arises, Cax's service representatives will be available to help within 24 hours after Leo reports the problem. But having warranties on services does not preclude a finding that the transaction falls under Article 2 of the ICC. See, e.g., Republic Steel v. Pa. Eng'g Corp. 785 F.2d 174, 181 (7th Cir. 1986) (holding that Article 2 of the ICC governed a contract

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containing warranties on goods and services because the latter were incidental to the former). A court would likely hold that the service warranties in the Agreement ultimately exist to ensure the proper functioning of the Equipment. Therefore, the warranties indicate that the services in the Agreement were incidental to the sale of a good.

iv. Did Leo have to pay sales taxes?

Adding a sales tax to the contract price can also shed light on a transaction's predominant purpose. See Meeker, 442 N.E.2d at 923 ("The plaintiff charged a sales tax on the total value of the contract. . . . [This sales tax] signif[ies] that a sale of goods was predominant and services incidental."); Tivoli Enter., 646 N.E.2d at 948 ("[A sales] tax is found in the sale of goods, not services."). In Tivoli Enter., a contract for the purchase and installation of replacement bowling lanes specified a total sales price of \$74,655, which included a sales tax. Id. Because the contract specified a sales tax, the transaction was deemed to fall under the ICC. Id.

Unlike the Meeker and Tivoli Enter. contracts, the Agreement does not mention a dollar amount of sales tax, much less add sales tax when calculating the final price. Instead, the Agreement states that Leo is responsible for "all taxes, charges, import, duties, assessments, or other charges lawfully levied or assessed by Hawaii." While the Agreement does not specify a dollar amount for taxes, Cax and Leo must have contemplated that Hawaii could have conceivably imposed a sales tax on the transaction. This provision, however, could be taken as evidence that the transaction was predominantly for the sale of a good.

v. How individualized and extensive were the design services Cax provided?

The type and extent of design services provided are other factors that courts in Illinois examine when assessing whether a contract falls under Article 2 of the ICC. If a contract does not involve extensive and individualized designing, it may be primarily for goods.

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The court in Bob Neiner Farms held that a contract for the erection and purchase of a farm machinery shed fell under Article 2 in part because it did not involve a complex and unique design. 490 N.E.2d 257, 258 (Ill. App. Ct. 1986). The court explained, “[T]he subject structure was of a type requiring noncreative, formula-like construction. While the object of each of the contracts was the erection of one or more structures with design specifications, neither contract required the builder-seller to provide detailed individual designing.” Id.

Unlike the farm machinery sheds in Bob Neiner Farms, the Equipment was not based on a cookie-cutter design. Designing the Equipment, as the Agreement and specifications show, was a complex endeavor; the parties held a design conference, and Leo received updates from Cax throughout the design process. Therefore, the holdings in Bob Neiner Farms and Nitrin suggest that Article 2 does not cover the Agreement.

But there are instances where the design services provided are extensive and yet the transaction still falls under Article 2. See, e.g., Republic Steel, 785 F.2d at 176. In Republic Steel, the plaintiff contracted with the defendant to design, manufacture, and install two furnaces in a steel mill. The court acknowledged that the design and engineering services were substantial. Id. at 181. It held, however, that “the heart of the Agreement” was the sale of the two furnaces and that the rendition of other services was incidental. Id. at 182.

The transaction between Leo and Cax is most analogous to the one in Republic Steel. Leo contracted with Cax to design, fabricate, test, deliver, install, and sell the Equipment. Similarly, in Republic Steel, the parties entered into a contract for the design, manufacture, and installation of two furnaces. In both cases, the design services were substantial, but at the “heart” of both transactions was the sale of a product.

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CONCLUSION

Leo and Cax engaged in a transaction that likely falls under Article 2 of the ICC. First, the Equipment meets Article 2's definition of "goods" because it was movable and identifiable to the contract no later than when Cax shipped its components to Leo's manufacturing complex in Hawaii. Second, although the Agreement included the provision of services to Leo, the predominant purpose test indicates that the purchase was mainly for the sale of goods and that services were likely incidental: (1) the Agreement refers to Leo as "purchaser" and Cax as "seller"; (2) the Equipment's title passed to Leo upon delivery at the Hawaii facility; (3) the Agreement contains warranties on the Equipment; and (4) while the transaction involved substantial design services, they were incidental to the sale of the Equipment. Therefore, the transaction was predominantly for the sale of a good and falls under Article 2 of the ICC.

Applicant Details

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Contact Phone Number	(914) 703-5846

Applicant Education

BA/BS From	Washington University in St. Louis
Date of BA/BS	May 2017
JD/LLB From	Harvard Law School
	https://hls.harvard.edu/dept/ocs/
Date of JD/LLB	May 23, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Harvard Journal of Law & Technology
Moot Court Experience	No

Bar Admission**Prior Judicial Experience**

Judicial Internships/ Externships	No
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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June 12, 2023

The Honorable John M. Walker, Jr.
United States Court of Appeals for the Second Circuit
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker,

I am writing to apply for a clerkship in your chambers during the 2025–2026 term. I am a rising third-year student at Harvard Law School and an editor of the *Harvard Journal of Law & Technology*. Currently, I am a summer associate at Cravath, Swaine & Moore. I was raised in New York, my family lives in Connecticut, and I am only applying to courts in the region.

Please find my enclosed resume, and writing sample. You will also receive letters of recommendation from the following people, who welcome inquiries:

Prof. Richard Clary
Harvard Law School
rclary@cravath.com
(617) 495-5291

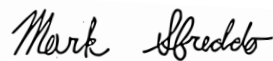
Prof. Jody Freeman
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(617) 496-4121

Prof. John Coates
Harvard Law School
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I am well equipped to manage complex fact patterns across multiple fields of law. I studied biochemistry and finance as an undergraduate, practiced patent litigation last summer at Fish & Richardson, and practice corporate law this summer at Cravath. I also have criminal law and family law experience from undergraduate internships. I am an enthusiastic learner with strong legal writing skills and keen attention to detail.

I would be grateful for any opportunity to interview with you. Thank you for your time and consideration.

Respectfully,



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EDUCATION

Harvard Law School, Cambridge, MA

J.D. Candidate, May 2024

Honors: Dean's Scholar Prizes in Legal Research & Writing, Legislation & Regulation, Evidence, and Mergers & Acquisitions

Activities: *Harvard Journal of Law & Technology*, Citations Manager
Scales of Justice *a cappella*, President
Harvard Law Entrepreneurship Project, Project Director

Washington University, St. Louis, MO

A.B., *summa cum laude* (GPA: 4.0) in [Bio]chemistry, Minor in Finance, May 2021

Honors: Phi Beta Kappa

Activities: Reverb *a cappella*, Bass Singer and Soloist

EXPERIENCE

Cravath, Swaine & Moore LLP, London, UK & New York, NY

Summer Associate, Corporate, Summer 2023

Prepare closing documents for cross-border reorganization and relisting of global industrial company. Research "debt-for-nature swaps" for client pitch on sustainability-linked sovereign debt restructuring.

Fish & Richardson P.C., New York, NY

Summer Associate, IP Litigation, Summer 2022

Second-chaired hearing on post-trial motion for prejudgment interest with seven-figure amount in controversy. Researched objective indicia of non-obviousness to support patent claim validity in U.S. International Trade Commission investigation. Drafted settlement offer in patent infringement case.

Public Wise, New York, NY

Legal Researcher, Summer 2021

Drafted briefing materials for House Select Committee to Investigate January 6th. Researched and catalogued over 500 federal criminal cases to create *InsurrectionIndex.org*, a comprehensive public online database on Jan. 6.

Washington University Department of Chemistry, St. Louis, MO

Teaching Assistant, Synthetic Polymer Chemistry, Fall 2018 – Fall 2020

Directed new laboratory class for Ph.D. candidates on the design, synthesis, and characterization of polymers.

Manhattan Family Court, New York, NY

Legal Intern, Summer 2017 & Summer 2019

Assisted with hearings and discovery for custody and visitation, order of protection, and child neglect cases.

Cougar Capital LLC, New York, NY

Summer Analyst, Summer 2018

Analyzed financial statements, IPO presentations, and patent portfolios to inform decisions on the trading floor.

Vista Volunteer Fire Department, South Salem, NY

Emergency Medical Technician, Fall 2015 – Summer 2020

PERSONAL

Interests include camping (Eagle Scout), collegiate rowing, international travel, spicy food, and following business and financial news. Limited working proficiency in French.

Harvard Law School

Record of: Mark E Sfreddo
Current Program Status: JD Candidate

Date of Issue: June 7, 2023
Not valid unless signed and sealed
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JD Program				2035	Constitutional Law: First Amendment	H	4
Fall 2021 Term: September 01 - December 03				2234	Feldman, Noah	H	4
1000	Civil Procedure 2	H	4		Brennan, Thomas		
	Greiner, D. James						Fall 2022 Total Credits: 14
1001	Contracts 2	H	4				
	Kennedy, Randall						Winter 2023 Term: January 01 - January 31
1006	First Year Legal Research and Writing 2B	H*	2	2249	Trial Advocacy Workshop	CR	3
	Millat, Caitlin				Sullivan, Ronald		
	* Dean's Scholar Prize						Winter 2023 Total Credits: 3
1003	Legislation and Regulation 2	H*	4				Spring 2023 Term: February 01 - May 31
	Freeman, Jody			3170	(Dis)illusionment for Young Lawyers	CR	1
	* Dean's Scholar Prize				Parker, Richard		
1004	Property 2	H	4	2048	Corporations	H	4
	Mann, Bruce				Coates, John		
Fall 2021 Total Credits: 18				2079	Evidence	H*	3
Winter 2022 Term: January 04 - January 21					Clary, Richard		
1051	Negotiation Workshop	CR	3	2184	* Dean's Scholar Prize		
	Heen, Sheila				Mergers and Acquisitions	H*	3
Winter 2022 Total Credits: 3					Coates, John		
Spring 2022 Term: February 01 - May 13					* Dean's Scholar Prize		
1024	Constitutional Law 2	P	4				Spring 2023 Total Credits: 11
	Jackson, Vicki						Total 2022-2023 Credits: 28
1002	Criminal Law 2	H	4				Fall 2023 Term: August 30 - December 15
	Lanni, Adriaan			2099	Antitrust Law & Economics - Global	~	5
1006	First Year Legal Research and Writing 2B	H	2		Elhauge, Einer		
	Millat, Caitlin			2013	Bankruptcy	~	4
2183	Mediation	H	3		Roe, Mark		
	Hoffman, David			2050	Criminal Procedure: Investigations	~	4
1005	Torts 2	P	4		Colgan, Beth		
	Davis, Seth			3117	Stakeholder Capitalism	~	1
Spring 2022 Total Credits: 17					Bebchuk, Lucian		
Total 2021-2022 Credits: 38							Fall 2023 Total Credits: 14
Fall 2022 Term: September 01 - December 31							Winter 2024 Term: January 02 - January 19
2000	Administrative Law	H	4	2169	Legal Profession	~	3
	Freeman, Jody				DeStefano, Michele		
3187	Advanced Written Advocacy	H	2				Winter 2024 Total Credits: 3
	Clary, Richard						

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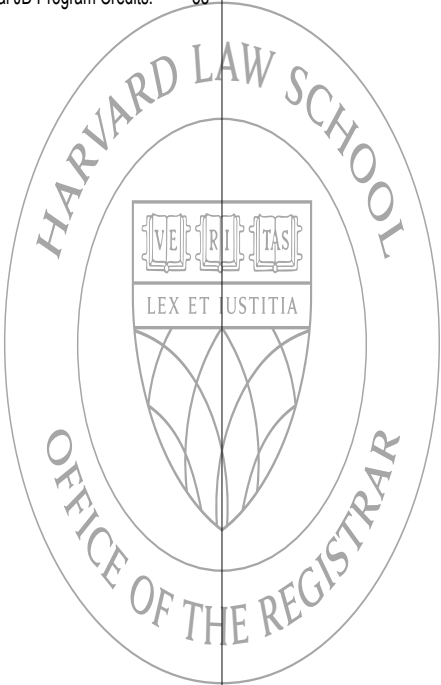


Harvard Law School

Record of: Mark E Sfreddo

Date of Issue: June 7, 2023
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Spring 2024 Term: January 22 - May 10				
2086	Federal Courts and the Federal System	~	5	
	Fallon, Richard			
Spring 2024 Total Credits:			5	
Total 2023-2024 Credits:			22	
Total JD Program Credits:			88	
End of official record				



Mark E. Sfreddo

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Transcript questions should be referred to the Registrar.

~~~~~  
 In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without the written consent of the current or former student.  
 ~~~~~

A student is in good academic standing unless otherwise indicated.

Accreditation

Harvard Law School is accredited by the American Bar Association and has been accredited continuously since 1923.

Degrees Offered

J.D. (Juris Doctor)
 LL.M. (Master of Laws)
 S.J.D. (Doctor of Juridical Science)

Current Grading System

Fall 2008 – Present: Honors (H), Pass (P), Low Pass (LP), Fail (F), Withdrawn (WD), Credit (CR), Extension (EXT)

All reading groups and independent clinicals, and a few specially approved courses, are graded on a Credit/Fail basis. All work done at foreign institutions as part of the Law School's study abroad programs is reflected on the transcript on a Credit/Fail basis. Courses taken through cross-registration with other Harvard schools, MIT, or Tufts Fletcher School of Law and Diplomacy are graded using the grade scale of the visited school.

Dean's Scholar Prize (*): Awarded for extraordinary work to the top students in classes with law student enrollment of seven or more.

Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

May 2011 - Present

<i>Summa cum laude</i>	To a student who achieves a prescribed average as described in the <u>Handbook of Academic Policies</u> or to the top student in the class
<i>Magna cum laude</i>	Next 10% of the total class following <i>summa</i> recipient(s)
<i>Cum laude</i>	Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients

All graduates who are tied at the margin of a required percentage for honors will be deemed to have achieved the required percentage. Those who graduate in November or March will be granted honors to the extent that students with the same averages received honors the previous May.

Prior Grading Systems

Prior to 1969: 80 and above (A+), 77-79 (A), 74-76 (A-), 71-73 (B+), 68-70 (B), 65-67 (B-), 60-64 (C), 55-59 (D), below 55 (F)

1969 to Spring 2009: A+ (8), A (7), A- (6), B+ (5), B (4), B- (3), C (2), D (1), F (0) and P (Pass) in Pass/Fail classes

Prior Ranking System and Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

Prior to 1961, Harvard Law School ranked its students on the basis of their respective averages. From 1961 through 1967, ranking was given only to those students who attained an average of 72 or better for honors purposes. Since 1967, Harvard Law School does not rank students.

<u>1969 to June 1998</u>	<u>General Average</u>
<i>Summa cum laude</i>	7.20 and above
<i>Magna cum laude</i>	5.80 to 7.199
<i>Cum laude</i>	4.85 to 5.799

June 1999 to May 2010

<i>Summa cum laude</i>	General Average of 7.20 and above (exception: <i>summa cum laude</i> for Class of 2010 awarded to top 1% of class)
<i>Magna cum laude</i>	Next 10% of the total class following <i>summa</i> recipients
<i>Cum laude</i>	Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients

Prior Degrees and Certificates

LL.B. (Bachelor of Laws) awarded prior to 1969.

The I.T.P. Certificate (not a degree) was awarded for successful completion of the one-year International Tax Program (discontinued in 2004).





Washington University in St. Louis

Office of the University Registrar

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Record Of: **Sfreddo, Mark Edward**

Degrees Awarded:

Student ID Number: 458251

A.B. MAJOR IN CHEMISTRY: BIOCHEMISTRY

CONCENTRATION

MAY 21, 2021

GRADUATED WITH A&S HONORS: SUMMA CUM LAUDE MAY 21, 2021

Transcript Issued 12/01/2021 To:

MINOR IN FINANCE

MAY 21, 2021

RECIPIENT AS DESIGNATED BY STUDENT

Fall Semester 2017

HISTORY OF WESTERN ART, ARCHITECTURE & DESIGN

ART-ARCH L01 113 3.0 A

GENERAL CHEMISTRY I

CHEM L07 111A 3.0 A

GENERAL CHEMISTRY LABORATORY I

CHEM L07 151 2.0 A

AMERICAN POLITICS

POL SCI L32 101B 3.0 A

FRENCH LEVEL 3: INTERMEDIATE FRENCH

FRENCH L34 201D 5.0 A

Enrolled Units 16.0

Semester GPA 4.00

Cumulative Units 31.0

Cumulative GPA 4.00

Spring Semester 2018

INDIVIDUAL IN A MANAGERIAL ENVIRONMENT

MGT B53 100 3.0 A+

GENERAL CHEMISTRY II

CHEM L07 112A 3.0 A

GENERAL CHEMISTRY LABORATORY II

CHEM L07 152 2.0 A

CALCULUS I

MATH L24 131 3.0 A+

FRENCH LEVEL 4: ADVANCED FRENCH

FRENCH L34 307D 3.0 A

COLLEGE WRITING 1

CWP L59 100 3.0 A

Enrolled Units 17.0

Semester GPA 4.00

Cumulative Units 48.0

Cumulative GPA 4.00

Fall Semester 2018

ORGANIC CHEMISTRY I WITH LAB

CHEM L07 261 4.0 A+

CALCULUS III

MATH L24 233 3.0 A

PHYSICS I

PHYSICS L31 197 4.0 A

FRENCH LEVEL 5: INTRODUCTION TO LITERARY AND CULTURAL ANALYSIS

FRENCH L34 308D 3.0 CR

PRACTICAL APPS OF ACADEMIC MENTORING

GEST L43 250 2.0 CR#

SEMINAR IN ACADEMIC MENTORING

GEST L43 275 1.0 CR#

Enrolled Units 17.0

Semester GPA 4.00

Cumulative Units 69.0

Cumulative GPA 4.00

Spring Semester 2019

ORGANIC CHEMISTRY II WITH LAB

CHEM L07 262 4.0 A

SYNTHETIC POLYMER CHEMISTRY

CHEM L07 452 3.0 A+

GREAT PHILOSOPHERS

PHIL L30 125C 3.0 A

PHYSICS II

PHYSICS L31 198 4.0 A

PRACTICAL APPS OF ACADEMIC MENTORING

GEST L43 250 2.0 CR#

Enrolled Units 16.0

Semester GPA 4.00

Cumulative Units 85.0

Cumulative GPA 4.00

Fall Semester 2019

PRINCIPLES OF FINANCIAL ACCOUNTING

ACCT B50 2610 3.0 A+

Keri A. Disch, University Registrar

TO VERIFY: TRANSLUCENT GLOBE ICONS MUST BE VISIBLE WHEN HELD TOWARD A LIGHT SOURCE



Washington University in St. Louis

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Page 2 of 3

Record Of: **Sfreddo, Mark Edward**

Student ID Number: 458251

Fall Semester 2019

PHYSICAL CHEMISTRY I	CHEM	L07	401	3.0	A
INTRODUCTION TO MICROECONOMICS	ECON	L11	1011	3.0	A+
ARGUMENTATION	WRITING	L13	312	3.0	A
ELEMENTARY PROBABILITY AND STATISTICS	MATH	L24	2200	3.0	A
Enrolled Units 15.0	Semester GPA 4.00	Cumulative Units 100.0	Cumulative GPA 4.00		

Spring Semester 2020

CAPITAL MARKETS & FINANCIAL MANAGEMENT	FIN	B52	340	3.0	A+
MANAGERIAL STATISTICS II	DAT	B59	121	3.0	A
PHYSICAL CHEMISTRY II	CHEM	L07	402	3.0	A
INORGANIC CHEMISTRY	CHEM	L07	461	3.0	A
PRINCIPLES OF BIOLOGY I	BIOL	L41	2960	4.0	A
Enrolled Units 16.0	Semester GPA 4.00	Cumulative Units 116.0	Cumulative GPA 4.00		

Fall Semester 2020

ADVANCED FINANCIAL MANAGEMENT	FIN	B52	448	3.0	A+
BIOORGANIC CHEMISTRY	CHEM	L07	453	3.0	A
GENERAL BIOCHEMISTRY I	CHEM	L07	481	3.0	A
PRINCIPLES OF BIOLOGY II	BIOL	L41	2970	4.0	A
ANTHROPOLOGICAL AND SOCIOLOGICAL STUDY OF MUSLIM SOCIETIES	ANTHRO	L48	3541	3.0	A
Enrolled Units 16.0	Semester GPA 4.00	Cumulative Units 132.0	Cumulative GPA 4.00		

Spring Semester 2021

MERGERS & ACQUISITIONS	FIN	B52	400I	1.5	A
ADVANCED VALUATION	FIN	B52	400J	1.5	A+
INVESTMENTS	FIN	B52	441	3.0	A+
INTRODUCTION TO MODERN ART, ARCHITECTURE AND DESIGN	ART-ARCH	L01	215	3.0	Z
GENERAL BIOCHEMISTRY II	CHEM	L07	482	3.0	A
LABORATORY IN PROTEIN ANALYSIS, PROTEOMICS, AND PROTEIN STRUCTURE	BIOL	L41	4522	3.0	A+
Enrolled Units 15.0	Semester GPA 4.00	Cumulative Units 144.0	Cumulative GPA 4.00		

Remarks

FL2017 FROM: ADVANCED PLACEMENT ADVANCED PLACEMENT CHEMISTRY I	0 UNITS
FL2017 FROM: ADVANCED PLACEMENT WESTERN CIVILIZATION	0 UNITS
FL2017 FROM: ADVANCED PLACEMENT FREEDOM, CITIZENSHIP AND THE MAKING OF AMERICAN LIFE	0 UNITS
FL2017 FROM: ADVANCED PLACEMENT BASIC PHYSICS I	0 UNITS
FL2017 FROM: BY PROFICIENCY FRENCH LEVEL 2: ESSENTIAL FRENCH 2	0 UNITS
FL2017 FROM: ADVANCED PLACEMENT AN INTRODUCTION TO BIOLOGY	0 UNITS
FL2017 FROM: TOTAL CREDIT GRANTED BY PREMATRICULATION UNITS	15.0 UNITS
SP2018 FROM: ADVANCED PLACEMENT ENGLISH COMPOSITION ELECTIVE	0 UNITS
SU2018 FROM: WESTCHESTER COMMUNITY COLLEGE CALCULUS II	4.0 UNITS
SP2020 SPECIAL NOTE: GIVEN THE COVID-19 DISRUPTION, DEAN'S LIST WAS NOT AWARDED DURING SPRING 2020.	
SP2020 SPECIAL NOTE: DURING THE SPRING OF 2020, A GLOBAL PANDEMIC REQUIRED SIGNIFICANT CHANGES TO	

Keri A. Disch, University Registrar

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Page 3 of 3

Record Of: **Sfreddo, Mark Edward**

Student ID Number: 458251

Remarks

COURSEWORK. UNUSUAL ENROLLMENT PATTERNS AND GRADES MAY REFLECT THE TUMULT OF THE TIME.

Distinctions, Prizes and Awards

FL2017 DEAN'S LIST

SP2018 DEAN'S LIST

SP2019 DEAN'S LIST

FL2019 DEAN'S LIST

FL2020 DEAN'S LIST

SP2021 PHI BETA KAPPA

***** END OF TRANSCRIPT *****



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June 06, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I write on behalf of Mark Sfreddo (HLS '24), who has applied to you for a clerkship. I am happy to give him my strongest recommendation.

I know Mark from teaching him in both my second-year Corporations course and in my upper-level M&A course. In Corporations he earned the top grade of Honors, and in M&A he earned one of my very few "Dean Scholars Prizes" (which is in effect an A+). To my memory, no other student has in my 25+ years of teaching managed to get top grades in both courses in the same semester. Both courses are large (70+ and 50+ students respectively) and competitive – M&A in particular is filled with students going to firms such as Cravath and Sullivan & Cromwell. In Corporations I use anonymous exam grading; in M&A I require students to work in teams on joint paper projects but to identify individual contributions so I grade individually.

In both classes, I track the quantity and quality of participation, and Mark's in-class participation in both settings if anything exceeded his excellent exam and paper – his contributions stood out amid students in the room, were consistent and always added to the discussion, sometimes taking it in genuinely novel (but useful) directions, and yet he was far from a "gunner" and contributed in a timely and controlled way. In both classes, too, I had students work in small teams, during class and on out-of-class exercises, and his teams' output demonstrated that Mark was an effective member of his team. He also demonstrated curiosity and a broader range of knowledge not derived from my class during office hours visits, and was always pleasant and friendly in our discussions.

For those reasons, I strongly recommend you hire Mark as a clerk. If I can provide any further information about this student, please call me directly at (617) 640-5943.

Best,
John C. Coates IV

John Coates - jcoates@law.harvard.edu - 617-496-4420

June 04, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I write to enthusiastically recommend Mark Sfreddo for a clerkship in your chambers in 2024-25, following his graduation from Harvard Law School in May 2024. Mark has a quick and agile mind and is a keen analytic thinker. He is super smart, intellectually curious, thoughtful, and brimming with ideas. He also writes clearly and persuasively. Mark's transcript at HLS is excellent and features four coveted Dean's Scholar prizes, including one in Legal Research and Writing. Mark will be a superb clerk, and I recommend him to you most highly.

I know Mark well. He was a student in both my 1L Legislation and Regulation course and my upper-level Administrative Law course. In both classes, he was simply outstanding. In Leg Reg, right from the first day, Mark was a very active participant in class discussion with his hand perpetually raised. I can recall many memorable exchanges from class. Once, when we were covering *Chapman*, a case that concerns the meaning of "mixture or substance" in the Controlled Substances Act, I half-jokingly asked if anyone in class was a chemist. Mark replied, "I happen to be a chemist" and went on to explain the technical definition – that a substance is a pure material, and a mixture is a combination of substances, so the phrase "mixture or substance" includes literally all physical matter. The class burst into laughter and applause.

Mark's final exam in Leg Reg was flawless. He displayed complete mastery of the tools and techniques of statutory interpretation and constitutional doctrines we had studied. My notes on the cover sheet say things like, "Excellent, superb, highly effective, smart, and well-written." Mark aced the issue spotter and then wrote a sophisticated response to a question asking whether the concept of legislative supremacy was a useful fiction. He answered that he thought it served to ensure good faith and "intended coherence" in statutory interpretation, which then he went on to explain. Mark's exam was so strong that I used the entire thing as a sample answer.

As a 2L, Mark took my administrative law class, and once again was a top contributor to class discussion. He was happy to weigh in on our wide-ranging debates about the separation of powers, democracy, judicial review, and the modern administrative state. He would also come to office hours to discuss doctrinal and theoretical questions. Among other things, we talked about the Supreme Court's decision in *Free Enterprise*, with Mark as I recall expressing the view that voiding "double insulation" structures may have a less drastic impact on presidential control of independent agencies than commonly thought because they constrain independent commissioners only at the margins. In one meeting, he speculated about what would ensue if Justice Gorsuch's dissent in *Gundy* became law, and in another he mused about why *Little Sisters of the Poor* has not led agencies to abandon traditional notice and comment rulemaking in favor of interim final rules.

Mark earned Honors on the administrative law exam and narrowly missed a Dean's Scholar prize. To provide some context, this was a highly competitive class of 115 students and a very difficult exam. It consisted of three short questions, a long issue spotter, and an open-ended policy question. On the short questions, which focused on doctrinal developments in administrative law, Mark made excellent nuanced arguments, drew smart connections between the cases, and expressed a clear and coherent point of view. On the issue spotter, he masterfully demonstrated his knowledge of the Administrative Procedure Act, justiciability doctrines, and standards of review (from *Skidmore* to *Chevron* through the Major Questions Doctrine). On the policy question, which concerned how one might go about fixing a failing agency, Mark was thoughtful about how to strengthen and defend the administrative state, and why strong institutions matter in a constitutional democracy.

Mark's transcript shows his strong interest in private law, and he has told me that he expects to be a transactional lawyer. He is spending his 2L summer working at Cravath, Swaine & Moore in London. Mark wants to clerk for several reasons, including that he remains open to a career in litigation, but also because he believes that corporate lawyers can benefit their clients immensely by understanding the litigation process, possible outcomes, and how judges and juries make decisions. He is very thoughtful about how much he would gain from clerking, and keen to contribute to the work of his judge.

Mark is a native New Yorker and has a unique background, having studied biochemistry and finance in college, which makes him well-suited for handling the challenging fact patterns that arise in New York courts. You will see from his work history that he has a diverse set of experiences that have given him excellent training, including working at Fish & Richardson doing patent litigation, researching federal criminal cases in the District of D.C. arising out of the January 6th Capitol Riots on behalf of a voting rights and democracy advocacy nonprofit, and interning at Manhattan Family Court and a New York-based hedge fund. He has shown that he is highly adaptable and has a broad range.

As you can see, I am a big fan of Mark's. He possesses all the credentials, intellectual gifts, and personal qualities that one looks for in the highest caliber clerks. He is energetic, meticulous, and detail oriented. He listens well and works quickly. And he is a lovely young man who will be a pleasure to have in chambers. I urge you to snap him up.

If I can be of any further assistance, please do not hesitate to call.

Sincerely,

Jody Freeman - freeman@law.harvard.edu - 617-496-4121

Jody Freeman
Archibald Cox Professor of Law
Director, Environmental & Energy Law Program

Jody Freeman - freeman@law.harvard.edu - 617-496-4121

June 05, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I write this letter of recommendation on behalf of Mark Sfreddo (Harvard Law School 2024), who is applying for a clerkship for the 2024 or next available Term.

Mark has taken two of my courses at Harvard Law School: Advanced Written Advocacy (Fall 2022) and Evidence (Spring 2023). Advanced Written Advocacy is a 20-student seminar, and Evidence is a large lecture course (120 students). In both courses, Mark was an active participant in class discussion, offering insightful observations and asking questions to test the boundaries of the legal doctrines. He also made good use of breaks, after class, and office hours to continue the discussion and test his own hypotheticals. He is bright, personable, and is very interested in law and legal practice.

I will focus my comments in particular on Mark's work in Advanced Written Advocacy. The course focuses on effective written advocacy at the federal district court level. Using publicly filed submissions from a variety of cases at different stages of litigation (motions to dismiss, discovery briefs and letter briefs, summary judgment briefs and supporting papers, preliminary injunction filings, and pre-trial in limine briefs), the students analyzed what is effective, what is not effective, and what is affirmatively harmful. Each student had to do four written assignments: editing a 30-page draft motion to dismiss brief down to 25 pages; drafting a preliminary statement for a motion to dismiss reply brief; writing a 10-page reply brief on a personal jurisdiction motion; and writing responses to a three-part in limine motion. Each writing assignment was separately graded, as was class participation.

I could always count on Mark to volunteer with observations that were on point and helped the class. He was able to spot the strengths and the flaws in each week's examples and to suggest better structure and language. All of his writing assignments were comprehensive and well organized, easy to follow and easy to edit. He successfully incorporated my comments into each subsequent assignment. He understood the need to keep the submissions clear and direct. His preliminary statement draft and in limine brief were especially well written: concise and persuasive. He received an Honors grade on all four assignments and in the course as a whole.

In Evidence, I could always count on Mark to volunteer on the toughest questions. His final exam was extremely well written and comprehensive, and he won a Dean's Scholar prize for the course.

I believe that Mark would be a thoughtful, hardworking and effective law clerk. His work product is first class and his easy-going manner would make him an effective team player inside chambers.

Thank you for considering this submission.

Respectfully,

Richard W. Clary
Lecturer on Law, Harvard Law School

Richard Clary - rclary@law.harvard.edu

Mark Sfreddo

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WRITING SAMPLE
Drafted Fall 2022

Written for the class Advanced Written Advocacy.
Contains only publicly available information.

The attached is a mock 10-page reply memorandum of law in support of a motion to dismiss for lack of personal jurisdiction. It is entirely my own work and is unedited by others. For the assignment, I was provided the defendant's motion to dismiss and the plaintiffs' memorandum in opposition. The relevant facts you should be aware of before reading the brief are as follows:

The plaintiffs, collectively the "Stark Funds," were investors in global chemical company Huntsman Corp. In 2014, they sued defendants Credit Suisse, Deutsche Bank, and Apollo Global Management in the U.S. District Court for the Eastern District of Wisconsin for alleged material misrepresentations relating to the financing of a proposed merger between Huntsman Corp. and Hexion Specialty Chemicals, Inc. The Stark Funds alleged that the defendants intentionally misrepresented in a commitment letter that the Huntsman-Hexion deal was "fully financed," inducing the Stark Funds to purchase Huntsman stock. Ultimately, Credit Suisse and Deutsche Bank reneged on their financing commitment, and the merger collapsed.

This brief argues that Deutsche Bank Securities Inc., a Delaware corporation with its principal place of business in New York, is not subject to personal jurisdiction in Wisconsin.

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

STARK MASTER FUND LTD., *et al.*,

Plaintiffs,

-against-

CREDIT SUISSE SECURITIES (USA) LLC,
et al.,

Defendants.

Case No. 14-CV-00689 (RTR)

**REPLY IN SUPPORT OF DEUTSCHE BANK SECURITIES INC.'S
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

AMES LAW GROUP, LLP
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*Attorney for Defendant
Deutsche Bank Securities, Inc.*

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PRELIMINARY STATEMENT

Under the Wisconsin long-arm statute and constitutional standards for due process, Deutsche Bank is not subject to personal jurisdiction in this Court. Neither the facts of this case nor the identities of the parties point to Wisconsin. Rather, the Stark Funds take advantage of Wisconsin's especially long statute of limitations for certain fraud claims—a deadline which they met by five days.¹ Because the Amended Complaint fails to satisfy the Stark Funds' "burden of demonstrating the existence of jurisdiction," *Purdue Rsch. Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 782 (7th Cir. 2003), this case should be dismissed pursuant to FED. R. CIV. P. 12(b)(2).

No provision of the Wisconsin long-arm statute is applicable here. First, Wis. Stat. § 801.05(1)(d) comports the heavy constitutional burden for general personal jurisdiction, which the Stark Funds cannot satisfy. Second, even if the Stark Funds could allege a "[l]ocal injury" in Wisconsin, financial injuries do not qualify as "injury to person or property." Wis. Stat. § 801.05(4). Third, all relevant financing activities took place in New York, Chicago, or Texas; they were not "local acts." Wis. Stat. § 801.05(3). Thus, Wisconsin's statutory standard is not met.

The Stark Funds apparently concede that general personal jurisdiction is impossible over Deutsche Bank, a Delaware corporation with a New York principal place of business, as it is not discussed in their Opposition Brief ("Opp'n"). Specific personal jurisdiction must fail, too. The Amended Complaint does not allege Deutsche Bank had *any* suit-related contacts to Wisconsin. Deutsche Bank's prime brokerage services are simply irrelevant: "the Court analyzes only those contacts from which the cause of action arise." *Kinetic Co. v. BDO EOS Svetovanje*, 361 F. Supp.

¹ See Wis. Stat. § 893.93(1)(b) (providing a six-year statute of limitations). The Amended Complaint alleges that Hexion first disclosed on June 18, 2008, that the Huntsman-Hexion merger may not close. (Am. Compl. ¶ 83). Therefore, the Stark Funds had until June 18, 2014 to sue. They sued on June 13, 2014.

2d 878, 886 (E.D. Wis. 2005). Furthermore, the Commitment Letter in no way “purposefully availed” Deutsche Bank of every jurisdiction in which Huntsman investors happened to reside. *See Walden v. Fiore*, 134 S. Ct. 1115, 1123 (2014) (“Due process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based [on] ‘random, fortuitous, or attenuated’ contacts . . .”). Specific jurisdiction would also be unreasonable and violate due process. *See Daimler AG v. Bauman*, 134 S. Ct. 746, 762 n.20 (2014).

Not only is so-called “conspiracy jurisdiction” unrecognized in Wisconsin, *see Insolia v. Philip Morris Inc.*, 31 F. Supp. 2d 660 (W.D. Wis. 1998), it would be subject to—and fail—the specific personal jurisdiction standard. *See Kuraki Am. Corp. v. Dynamic Intl. of Wis.*, 2014 WL 6834266, at *2 (E.D. Wis. Dec. 3, 2014) (stating conspiracy jurisdiction cannot “bypass due process analysis”). Essentially, the Stark Funds ask this Court to find a new theory of personal jurisdiction in the tea leaves of Wisconsin dicta. The Court should not do so.

ARGUMENT

I. THE PLAINTIFF MUST ESTABLISH PERSONAL JURISDICTION.

“[T]he plaintiff bears the burden of demonstrating the existence of jurisdiction.” *Purdue*, 338 F.3d at 782. If the defendant submits “evidence in opposition to the exercise of jurisdiction, the plaintiff must go beyond the pleadings and submit affirmative evidence supporting the exercise of jurisdiction.” *Id.* at 783. Any material disputed facts must be resolved at an “evidentiary hearing,” at which the plaintiff must prove its allegations by a preponderance of the evidence. *Hyatt Int’l Corp. v. Coco*, 302 F.3d 707, 713 (7th Cir. 2002).

II. THE WISCONSIN LONG-ARM STATUTE DOES NOT AUTHORIZE PERSONAL JURISDICTION OVER DEUTSCHE BANK.

“The extent of this Court’s personal jurisdiction depends upon the scope of the Wisconsin long-arm statute, Wis. Stat. § 801.05, subject to federal constitutional limits.” *Kinetic Co.*, 361 F.

Supp. 2d at 883. While the Opposition Brief cites three long-arm provisions, none supply a basis for exercising personal jurisdiction over Deutsche Bank in Wisconsin.

First, Deutsche Bank has no “continuous and systematic business contacts” that would satisfy Wis. Stat. § 801.05(1)(d), which comports the federal constitutional standard for general personal jurisdiction. *Heritage Christian Sch, Inc. v. INGN. Am. Ins. Corp.*, 2012 WL 1079440 at *2 (E.D. Wis. Mar. 30, 2012); *Daimler*, 134 S. Ct. at 761 n.19 (“[T]heir affiliations with the State [must be] so ‘continuous and systematic’ as to render them essentially at home.”). As the Stark Funds appear to concede, general jurisdiction cannot be satisfied.

Second, the British Virgin Islands-incorporated Stark Funds allege no “[l]ocal injury . . . to person or property within this state.” Wis. Stat. § 801.05(4)(a). The Amended Complaint makes no mention of where the Stark Funds experienced their claimed injuries. (Am. Compl. ¶ 87-88). Only now do they assert the injury arose “in Wisconsin . . . where [their] principal place of business is located.” Opp’n at 11. Tellingly, the offshore funds cite no support for the proposition that financial losses are felt where one’s “operations are housed” rather than in one’s chosen home.

Even if the plaintiffs could allege injury in Wisconsin, financial losses are not necessarily “injury to person or property.” Wis. Stat. § 801.05(4)(a). See *Hous. Horizons, LLC v. Alexander Co.*, 606 N.W.2d 263, 265 n.4 (Wis. Ct. App. 1999). The Stark Funds cite *Felland*, but that case relied upon the “local act” provision § 801.05(3), not the “local injury” provision § 801.05(4)(a). *Felland v. Clifton*, 682 F.3d 655, 678-79 (7th Cir. 2012); Opp’n at 11 n.2. Meanwhile, other jurisdictions interpreting the same “injury to person or property” statutory language have ruled financial losses do not confer jurisdiction. See, e.g., *Whitaker v. Am. Telecasting, Inc.*, 261 F.3d 196, 209 (2d Cir. 2001) (“[F]inancial consequences in New York due to the fortuitous location of plaintiffs in New York is not a sufficient basis for jurisdiction under [N.Y. C.P.L.R.] § 302(a)(3).”).

Third, the Stark Funds cannot allege a local “injury . . . arising out of an act or omission within this state.” Wis. Stat. § 801.05(3). The plaintiffs’ claims arise solely from the Huntsman-Hexion financing activity, none of which took place in Wisconsin. Any alleged prime brokerage services occurring in Wisconsin are irrelevant because they did not give rise to the Stark Funds’ claims. Opp’n at 10; *see infra* Part III. Moreover, the Stark Fund’s contention that the Commitment Letter giving rise to this suit was a “Wisconsin-directed communication” invites the absurd conclusion that Deutsche Bank committed “local acts” all across the country, wherever Huntsman investors happened to reside. Opp’n at 11; *see infra* Part III.B. By contrast, the communications in *Felland* were “several . . . emails, phone calls, and letters [sent] to the Fellands at their home in Wisconsin.” *Felland*, 682 F.3d at 669. That is a far cry from this case. In sum, no provision of the Wisconsin long-arm statute is applicable.

III. THE STARK FUNDS CANNOT ESTABLISH SPECIFIC JURISDICTION OVER DEUTSCHE BANK.

A court may assert specific personal jurisdiction only when the defendant’s “in-state activity is ‘continuous and systematic’ and that activity gave rise to the episode-in-suit.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2853 (2011) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945)). The defendant must have “purposefully availed itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” *Kinetic Co.*, 361 F. Supp. 2d at 885 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). And “only those contacts from which the cause of action arises” may be considered for specific jurisdiction purposes. *Id.* Even when the plaintiff proves sufficient suit-related contacts and purposeful availment, the court must weigh five public- and private-interest factors “to determine whether the exercise of personal jurisdiction satisfies traditional notions of

fair play and substantial justice.” *Int’l Med. Grp. v. Am. Arb. Ass’n*, 312 F.3d 833, 846 (7th Cir. 2002); *see also Daimler*, 134 S. Ct. at 762 n.20 (requiring “a multipronged reasonableness check”).

A. The Prime Brokerage Relationship Did Not Give Rise to These Claims and Is Therefore Excluded from the Specific Jurisdiction Analysis.

The Stark Funds cannot allege sufficient suit-related contacts to establish specific jurisdiction. So instead, they emphasize the alleged prime brokerage relationship between the parties. (Am. Compl. ¶ 10). But courts “cannot simply aggregate all of a defendant’s contacts with a state—no matter how dissimilar in terms of geography, time, or substance—as evidence of the constitutionally-required minimum contacts.” *RAR, Inc. v. Turner Diesel, Ltd.*, 107 F.3d 1272, 1277 (7th Cir. 1997). Specific personal jurisdiction is not “general jurisdiction-lite”; it is a separate constitutional standard, under which only *contacts giving rise to the instant claims* are relevant. *See Kinetic Co.*, 361 F. Supp. 2d at 885. Deutsche Bank need not be a “stranger to Wisconsin” for specific jurisdiction to be improper. Opp’n at 7. Because no claims were alleged to arise under the prime brokerage relationship, (Am. Compl. ¶ 98), neither Deutsche Bank’s alleged prime broker “solicitation and service activities” nor its Wisconsin broker-dealer license can serve as a basis for specific personal jurisdiction. Opp’n at 3-4.

B. The Alleged Misrepresentations Were Not Purposefully Directed at Wisconsin and Therefore Cannot Support Specific Jurisdiction.

Stripping away allegations about the prime brokerage relationship, the Stark Funds allege only that “the Banks intended for and knew that institutional shareholders such as plaintiffs would rely on the Commitment Letter in deciding whether to retain their Huntsman position and/or purchase additional shares.” (Am. Compl. ¶ 38; *see also id.* ¶ 2). That is not conduct “purposely directed at the forum state,” *Tamburo v. Dworkin*, 601 F.3d 693, 702 (7th Cir. 2010), for “the plaintiff cannot be the only link between the defendant and the forum.” *Walden v. Fiore*, 134 S.

Ct. 1115, 1122 (2014). The Commitment Letter was negotiated in New York and Chicago, executed in New York, contained New York governing law and forum selection clauses, committed funding to a New Jersey corporation headquartered in Ohio, and contemplated no performance in Wisconsin. (Welch Decl. ¶ 12; Baron Decl. Ex. 6). Any connection between that document and Wisconsin is by virtue of the Stark Funds' alleged location, not Deutsche Bank's "own affiliation with the State." *Walden*, 134 S. Ct. at 1123.

A finding that the Commitment Letter was directed at Wisconsin would do great harm to the due process rights of the defendant. By the Stark Funds' reasoning, Deutsche Bank could be subject to personal jurisdiction in every place where an investor allegedly relied upon the Commitment Letter. Purposeful availment would lose all meaning. This would violate the principle that "amenability to jurisdiction is not based on random, fortuitous, or attenuated contacts, but on contacts that demonstrate a real relationship with the state." *N. Grain Mktg., LLC v. Greving*, 743 F.3d 487, 492-93 (7th Cir. 2014) (citations and internal quotations omitted). For these reasons, the Commitment Letter cannot satisfy the purposeful availment test for specific personal jurisdiction. Since the Amended Complaint alleges no other contacts that relate to the instant claims, jurisdiction cannot be exercised over Deutsche Bank in Wisconsin.

IV. SO-CALLED "CONSPIRACY JURISDICTION" IS UNRECOGNIZED IN WISCONSIN AND CANNOT BE USED TO BYPASS DUE PROCESS.

Tacitly acknowledging the difficulty of establishing personal jurisdiction over Deutsche Bank, the Stark Funds pad their argument with facts relating to Credit Suisse. They cannot do so. "Wisconsin courts have not recognized a theory of specific jurisdiction based on allegations that a nonresident is part of a conspiracy." *Insolia v. Philip Morris Inc.*, 31 F. Supp. 2d 660, 672 (W.D. Wis. 1998) (citing *Stauffacher v. Bennett*, 969 F.2d 455, 460 (7th Cir. 1992)).

Rasmussen, cited by the plaintiffs, is unavailing. See *Rasmussen v. Gen. Motors Corp.*, 335 Wis. 2d 1, 17 (2011). That case found that an agency relationship *did not* support general jurisdiction over the defendant. *Id.* To the extent *Rasmussen* leaves open the possibility that an agency relationship could support specific jurisdiction, it is dicta citing dicta. *Id.* at 16-17 & n.24 (citing *Pavalon v. Fishman*, 30 Wis. 2d 228 (1966); *Pavlic v. Woodrum*, 169 Wis. 2d 585, 590-91 (Ct. App. 1992)) (noting that neither *Pavalon* nor *Pavlic* reached the issue of agency-based specific jurisdiction). Furthermore, “there is no explicit textual support in Wis. Stat. § 801.05 for jurisdiction founded on allegations of conspiracy.” *Insolia*, 31 F. Supp. 2d at 672. Nor would the Wisconsin long-arm statute indicate how Wisconsin courts would treat conspiracy jurisdiction under the federal constitutional standard.

Even assuming “conspiracy jurisdiction” exists in Wisconsin, it would be subject to ordinary constitutional standards of due process. See *Kuraki*, 2014 WL 6834266, at *2 (“In any event, this theory cannot be used to ‘bypass due process analysis.’”). When a plaintiff alleges a tort such as civil conspiracy, the contacts inquiry “focuses on whether the conduct underlying the claims was purposely directed at the forum state.” *Tamburo*, 601 F.3d at 702. For the reasons set forth above, no financing-related activities were directed at Wisconsin, and thus specific personal jurisdiction cannot be established over Deutsche Bank.

Additionally, Deutsche Bank joins in and adopts the discussion in Part III.D-III.E of Apollo’s Memorandum of Law in Support of Their Motion to Dismiss the Amended Complaint, which explains that plaintiffs’ claims for aiding and abetting fraud and conspiracy must be dismissed because they have not alleged an underlying tort. If the Court dismisses the conspiracy claim, it need not consider conspiracy jurisdiction.

V. EVEN IF THE STARK FUNDS COULD ALLEGE SUFFICIENT SUIT-RELATED CONTACTS TO SATISFY PURPOSEFUL AVAILMENT, THE EXERCISE OF SPECIFIC JURISDICTION WOULD BE UNREASONABLE.

Unreasonable exercises of personal jurisdiction violate due process, even when the plaintiff has otherwise shown sufficient suit-related contacts and purposeful availment. *See Daimler*, 134 S. Ct. at 762 n.20. The “inquiry evokes a sliding scale,” wherein a weak showing by the plaintiff as to purposeful availment is defeated by a correspondingly modest showing of unreasonableness by the defendant. *Ticketmaster-N.Y., Inc. v. Alioto*, 26 F.3d 201, 210 (1st Cir. 1994).

Courts weigh five public- and private-interest factors “in order to determine whether the exercise of personal jurisdiction satisfies traditional notions of fair play and substantial justice.” *Int’l Med.*, 312 F.3d at 846. The fairness factors are (1) the defendant’s burden, (2) the forum state’s interest, (3) convenience to the plaintiff, (4) “the interstate judicial system’s interest [in] efficient resolution of controversies,” and (5) “the shared interest of the several States in furthering fundamental substantive social policies.” *Asahi Metal Indus. Co. v. Super Ct. of Cal.*, 480 U.S. 102, 113 (1987); *see Kinetic Co.*, 361 F. Supp. 2d at 886-87 (applying the factors). Here, fairness weighs against exercising personal jurisdiction.

As to Factor (1), Deutsche Bank’s burden of litigating in a distant forum is a heavy one, even if it is no greater than the burden that “out-of-state defendants always face.” *Felland*, 682 F.3d at 667; Opp’n at 18. “Due process limits on the State’s adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties.” *Walden*, 134 S. Ct. at 1122. Deutsche Bank’s due process rights should not be taken lightly.

The remaining factors all weigh against the exercise of personal jurisdiction. As to Factors (2) and (3), the Stark Funds are “British Virgin Islands corporations.” (Am. Compl. ¶ 9). While the Stark Funds assert Wisconsin’s “interest in providing a forum for its residents,” Opp’n at 18,

“plaintiffs can neither shed their British Virgin Islands citizenship, nor pretend it does not exist when advantageous to do so.” *In re Arrowhead Cap. Mgmt. LLC Class Litig.*, 712 F. Supp. 2d 924, 930 (D. Minn. 2010). This undermines both Wisconsin’s state interest and the offshore funds’ convenience interest. And “Wisconsin does not have any strong interest in adjudicating” a dispute that centers on business dealings in other jurisdictions. *Kinetic Co.*, 361 F. Supp. 2d at 887.

Judicial economy (Factor (4)) weighs in favor of dismissal, given the extensive litigation in Delaware, New York, and Texas relating to the failed Huntsman-Hexion merger. While the Stark Funds portray Deutsche Bank as wishing “to prevent Stark from having its day in court at all,” that is not so. Opp’n at 19. As the Banks argue in their Joint Memorandum in Support of Their Motion to Dismiss the Amended Complaint for Failure to State a Claim (the “Joint Memo”), the plaintiffs assert derivative claims. Huntsman fully litigated—and later relinquished—all claims on behalf of itself and its shareholders, recovering \$620 million in cash, \$1.1 billion in debt financing, and \$12 million in litigation costs. Joint Memo at 8, 24. Dismissal would do no injury to shareholders’ rights, for they have already been vindicated by the corporation itself.

Lastly, the Stark Funds engage in quintessential forum shopping. Dismissal would further the “substantive social policy” (Factor (5)) against such practices. *See Hanna v. Plumer*, 380 U.S. 460, 468 (1965) (defining “the twin aims of the Erie rule” as “discouragement of forum-shopping and avoidance of inequitable administration of the laws”). Texas, where MaitlinPatterson’s nearly identical suit was filed, already time-barred the Stark Funds’ claims under its applicable four-year statute of limitations. *See* Tex. Civ. Prac. & Rem. Code § 16.004(a); *see also MatlinPatterson Global Opportunities Partners L.P. v. Deutsche Bank Sec., Inc.*, No. 09-13-00070-CV, 2014 WL 2050237, at *3 (Tex. Ct. App. May 15, 2014). But Wisconsin provides a more generous six-year statute of limitations. *See* Wis. Stat. § 893.93(1)(b). Taking as true the Stark Funds’ allegation that

the merger's likely failure was announced on June 18, 2008, (Am. Compl. ¶ 83), the plaintiffs had until June 18, 2014 to sue. They sued on June 13, 2014. (See Welch. Decl. ¶ 11). The Stark Funds seek to shoehorn this suit into Wisconsin court because they missed the deadline elsewhere.

Taken as a whole, the fairness factors weigh strongly against the exercise of specific personal jurisdiction over Deutsche Bank. Even if the Stark Funds could allege sufficient suit-related contacts to satisfy purposeful availment—which they cannot—the reasonableness inquiry provides independent grounds for dismissal.

CONCLUSION

For the reasons set forth above, the Court should grant Deutsche Bank's motion to dismiss the Amended Complaint for lack of personal jurisdiction. FED. R. CIV. P. 12(b)(2). To the extent that the Court deems material facts relevant to this motion to be in genuine dispute, Deutsche Bank respectfully requests that an evidentiary hearing be held.

November 8, 2022

Respectfully submitted,

AMES LAW GROUP, LLP

Mark Sfreddo
1585 Massachusetts Ave #517
Cambridge, MA 02138
(914) 703-5846
msfreddo@jd24.law.harvard.edu

*Attorney for Defendant
Deutsche Bank Securities, Inc.*

Applicant Details

First Name	Nicholas		
Last Name	Sweeney		
Citizenship Status	U. S. Citizen		
Email Address	sweeneyn@umich.edu		
Address	<table> <tr> <th>Address</th> </tr> <tr> <td> Street 15 Riverplace Drive, Unit 1533 City South Portland State/Territory Maine Zip 04106 Country United States </td> </tr> </table>	Address	Street 15 Riverplace Drive, Unit 1533 City South Portland State/Territory Maine Zip 04106 Country United States
Address			
Street 15 Riverplace Drive, Unit 1533 City South Portland State/Territory Maine Zip 04106 Country United States			
Contact Phone Number	(614) 264-9409		

Applicant Education

BA/BS From	Haverford College in Pennsylvania
Date of BA/BS	May 2019
JD/LLB From	The University of Michigan Law School http://www.law.umich.edu/currentstudents/careerservices
Date of JD/LLB	May 3, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Michigan Law Review
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	No
--------------------------------------	----

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Vogel, Cecilia
Cecilia.Vogel@usdoj.gov
Edmonds, Mira
edmondm@umich.edu
Halberstam, Daniel
dhalber@umich.edu
734-763-4408

This applicant has certified that all data entered in this profile and any application documents are true and correct.

NICHOLAS ARMIG SWEENEY

15 Riverplace Drive, Unit 1533, South Portland, ME 04106
(614) 264-9409 (cell) | sweeneyn@umich.edu

The Honorable John M. Walker Jr.
U.S. Court of Appeals for the Second Circuit
Connecticut Financial Center
157 Church Street, 18th Floor
New Haven, CT 06510-2100

June 12, 2023

Dear Judge Walker:

I am a rising third-year law student at the University of Michigan Law School, and I am writing to apply for a clerkship in your chambers for the 2025-2026 term. As an aspiring Assistant U.S. Attorney who had the opportunity to contribute to white collar, public corruption, and narcotics cases as a legal intern at the U.S. Attorney's Office, SDNY, I admire your own experience at the U.S. Attorney's Office, as well as your government service at the Department of Treasury. Further, I am particularly interested in clerking in Connecticut because my parents and extended family live nearby in Portland, Maine and because I hope to pursue my legal career in New England. In these ways, I would find the opportunity to clerk in your chambers especially meaningful and enriching.

Prior to law school, I spent two years working in Armenia and France and observed various issues related to rule of law and human rights. These experiences inspired me to pursue a career in government or public interest litigation, and my exposure to white collar investigative work at the U.S. Attorney's Office has more specifically drawn me to federal prosecution. In law school, I have endeavored to improve my research and writing skills. I received Honors in my legal writing course, was selected to serve as an Executive Editor of the *Michigan Law Review*, and have completed a draft of a student Note centered on treaty-withdrawal and executive power. As an advocate, I took on a unique level of responsibility in my litigation clinic by leading a five-hour, trial-like administrative hearing. As part of this hearing, I wrote direct- and cross-examinations for ten witnesses, presented an opening statement and closing argument, and independently researched case law, statutory law, and legislative history. I handled this responsibility in addition to several eviction cases, for which I drafted pleadings, conducted settlement conferences, and appeared in court regularly. I believe these experiences will prepare me well to succeed as a clerk in your chambers.

I have enclosed my resume, law school and undergraduate transcripts, and a writing sample for your review. Letters of recommendation from two of my professors and from my work supervisor at SDNY have also been provided. Their names and contact information are:

- Professor Mira Edmonds: edmondm@umich.edu, (734) 763-4408
- Professor Daniel Halberstam: dhalber@umich.edu, (734) 647-1964
- Cecilia Vogel, Assistant U.S Attorney, Southern District of New York, Cecilia.Vogel@usdoj.gov, (646) 640-6296

Thank you for your time and consideration.

Respectfully,

Nicholas A. Sweeney

NICHOLAS ARMIG SWEENEY

15 Riverplace Drive, Unit 1533, South Portland, ME 04106

(614) 264-9409 (cell) | sweeneyn@umich.edu

EDUCATION

UNIVERSITY OF MICHIGAN LAW SCHOOL

Ann Arbor, MI

Juris Doctor

Expected May 2024

GPA 3.793

Journal: *Michigan Law Review* (Executive Editor, Editorial Board Member).

Activities: Independent Student Note Research with Professor Daniel Halberstam (writing on withdrawal from international agreements); Civil-Criminal Litigation Clinic (Student Attorney); M For The People – Public Service and Prosecutorial Society (Events Chair); Environmental Crimes Project (Pro Bono Volunteer).

HAVERFORD COLLEGE

Haverford, PA

Bachelor of Science in Astrophysics, minor in Philosophy, *Phi Beta Kappa*, *Magna Cum Laude*

May 2019

Honors: High Honors in Astrophysics; ITA Tennis Scholar-Athlete (2016-19); Ambler Student-Athlete Award.

Activities: *Haverford Law Review* (Ed Board Member; Author of *The International Criminal Court at a Crossroads: Tracing the Development of Universal Norms*, 2019); Mock Trial (Attorney); Varsity Tennis (Co-Captain).

EXPERIENCE

MANHATTAN DISTRICT ATTORNEY'S OFFICE

New York, NY

Summer Law Fellow

June 2023 – August 2023

MICHIGAN CIVIL-CRIMINAL LITIGATION CLINIC

Ann Arbor, MI

Student Attorney

August 2022 – May 2023

- Spoke on the record as lead counsel for plaintiff or defendant in landlord-tenant and administrative matters.
- Prepared and delivered direct examinations and opening and closing statements for an administrative hearing.
- Researched and wrote motions, counseled clients, drafted pleadings, and negotiated settlements.

U.S. ATTORNEY'S OFFICE, SOUTHERN DISTRICT OF NEW YORK

New York, NY

Summer Law Intern – Criminal Division (Money Laundering Unit; Public Corruption Unit)

May 2022 – August 2022

- Drafted motions and briefs on issues such as Compassionate Release during the Covid-19 pandemic and the interpretation of U.S. Sentencing Guidelines provisions.
- Researched and wrote memos on evidentiary matters such as the applicability of hearsay exceptions.
- Performed background investigative work and attended proffers, witness preparations, and court proceedings.

LYCÉE DÉODAT DE SÉVERAC

Toulouse, France

English Language Teacher

September 2020 – April 2021

- Taught high-school students and coached graduating students for cumulative “Baccalauréat” exams.
- Graded and provided feedback for student presentations on cultural themes such as politics, AI, and social justice.

SHIRAK STATE UNIVERSITY

Gyumri, Armenia

Guest Lecturer and English Teacher

October 2019 – January 2020

- Lectured to prospective foreign language teachers on English teaching methodology from the U.S.
- Directed English Club for students to improve conversational fluency and understanding of American culture.

HAVERFORD | SWARTHMORE | OHIO WESLEYAN

Haverford, PA | Swarthmore, PA | Delaware, OH

Three Years as Summer Research Fellow

Summers 2016, 2017, 2018

- Conducted long-term Astrophysics research leading to thesis and presentations at national conferences.

ADDITIONAL

Languages: French (Fluent – DALF C1), Spanish (Intermediate), Armenian (Intermediate).

Volunteer: “AYO” Women’s Rights Fundraising Project (2020, 20hrs/wk); Armenia Tree Project (2020, 20hrs/wk); Gyumri High School Volunteer English Teacher (2020, 20hrs/wk); Haverford Astronomy Night (2017-19, 2hrs/wk).

Interests: Tennis; violin; film; learning new languages.

Control No: E196660101

Issue Date: 05/30/2023

Page 1

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Sweeney, Nicholas Armig
Student#: 48134572



Paul R. Sweeney
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Towards Program	Credit Grade
Fall 2021 (August 30, 2021 To December 17, 2021)								
LAW	510	004	Civil Procedure	Maureen Carroll	4.00	4.00	4.00	A-
LAW	520	003	Contracts	Albert Choi	4.00	4.00	4.00	A-
LAW	540	001	Introduction to Constitutional Law	Daniel Halberstam	4.00	4.00	4.00	A
LAW	593	013	Legal Practice Skills I	Timothy Pinto	2.00		2.00	H
LAW	598	013	Legal Pract:Writing & Analysis	Timothy Pinto	1.00		1.00	H
Term Total				GPA: 3.800	15.00	12.00	15.00	
Cumulative Total				GPA: 3.800		12.00	15.00	
Winter 2022 (January 12, 2022 To May 05, 2022)								
LAW	530	002	Criminal Law	Luis CdeBaca	4.00	4.00	4.00	B
LAW	580	001	Torts	Kyle Logue	4.00	4.00	4.00	A
LAW	594	013	Legal Practice Skills II	Margaret Hannon	2.00		2.00	H
LAW	630	001	International Law	Gregory Fox	3.00	3.00	3.00	A
Term Total				GPA: 3.636	13.00	11.00	13.00	
Cumulative Total				GPA: 3.721		23.00	28.00	

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The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Sweeney, Nicholas Armig
Student#: 48134572



Paul R. Sweeney
University Registrar

Course	Section	Load	Graded	Towards	Credit			
Subject	Number	Number	Course Title	Instructor	Hours	Hours	Program	Grade
Fall 2022 (August 29, 2022 To December 16, 2022)								
LAW	664	002	European Union Law	Daniel Halberstam	3.00	3.00	3.00	A
LAW	669	002	Evidence	David Moran	3.00		3.00	P
LAW	900	393	Research	Patrick Barry	1.00		1.00	S
LAW	920	001	Civil-Criminal Litigation Cln	Mira Edmonds	4.00	4.00	4.00	A+
				Victoria Clark				
LAW	921	001	Civil-Criminal Litig Cln Sem	Mira Edmonds	3.00	3.00	3.00	A-
				Victoria Clark				
Term Total				GPA: 4.030	14.00	10.00	14.00	
Cumulative Total				GPA: 3.815		33.00	42.00	
Winter 2023 (January 11, 2023 To May 04, 2023)								
LAW	601	001	Administrative Law	Nina Mendelson	4.00	4.00	4.00	A-
LAW	643	001	Crim Procedure: Bail to Post Conviction Review	Barbara Mcquade	3.00	3.00	3.00	B+
LAW	797	001	Model Rules and Beyond	Bob Hirshon	3.00	3.00	3.00	A-
LAW	900	075	Research	Daniel Halberstam	2.00	2.00	2.00	A
LAW	980	424	Advanced Clinical Law	Mira Edmonds	2.00	2.00	2.00	A+
Term Total				GPA: 3.742	14.00	14.00	14.00	
Cumulative Total				GPA: 3.793		47.00	56.00	
Fall 2023 (August 28, 2023 To December 15, 2023)								
Elections as of: 05/30/2023								
LAW	612	001	Alternative Dispute Resolution	Allyn Kantor	3.00			
LAW	641	001	Crim Just: Invest&Police Prac	Ekow Yankah	4.00			
LAW	677	001	Federal Courts	Gil Seinfeld	4.00			
LAW	780	001	Human Rights: Themes and Var	Steven Ratner	3.00			

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The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Sweeney, Nicholas Armig
Student#: 48134572



Paul R. Sweeney
University Registrar

End of Transcript
Total Number of Pages 3



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University of Michigan Law School Grading System

Honor Points or Definitions

Through Winter Term 1993	Beginning Summer Term 1993
A+ 4.5	A+ 4.3
A 4.0	A 4.0
B+ 3.5	A- 3.7
B 3.0	B+ 3.3
C+ 2.5	B 3.0
C 2.0	B- 2.7
D+ 1.5	C+ 2.3
D 1.0	C 2.0
E 0	C- 1.7
	D+ 1.3
	D 1.0
	E 0

Other Grades:

- F Fail.
- H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.
- I Incomplete.
- P Pass when student has elected the limited grade option.*
- PS Pass.
- S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)
- T Mandatory pass when student is transferring to U of M Law School.
- W Withdrew from course.
- Y Final grade has not been assigned.
- * A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

Third Party Recipients

As a third party recipient of this transcript, you, your agents or employees are obligated by the Family Rights and Privacy Act of 1974 not to release this information to any other third party without the written consent of the student named on this Cumulative Grade Report and Academic Record.

Official Copies

An official copy of a student's University of Michigan Law School Cumulative Grade Report and Academic Record is printed on a special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required. A black and white is not an original. Any alteration or modification of this record or any copy thereof may constitute a felony and/or lead to student disciplinary sanctions.

The work reported on the reverse side of this transcript reflects work undertaken for credit as a University of Michigan law student. If the student attended other schools or colleges at the University of Michigan, a separate transcript may be requested from the University of Michigan, Office of the Registrar, Ann Arbor, Michigan 48109-1382.

Any questions concerning this transcript should be addressed to:

Office of Student Records
University of Michigan Law School
625 South State Street
Ann Arbor, Michigan 48109-1215
(734) 763-6499



Rashida Y. Douglas

Registrar; Director

Office of Student Records, 300 Hutchins Hall

625 S. State Street, Ann Arbor, MI 48109-1215

Phone: 734.763.6499 | Fax: 734.936.1973

Email: lawrecords@umich.edu

Memo: 2018 - 2022 Class Ranking

To whom it may concern:

The University of Michigan Law School does not rank its current students; however, it does rank graduates upon completion of their degrees. As the GPAs that correspond to particular percentages do change slightly from year to year, we are providing averages for the graduating classes from the past five academic years (2018 - 2022). Thus, the following information may assist you in evaluating candidates:

- Students with a cumulative GPA of 4.010 and above finished in the top 1%
- Students with a cumulative GPA of 3.941 and above finished in the top 2%
- Students with a cumulative GPA of 3.921 and above finished in the top 3%
- Students with a cumulative GPA of 3.884 and above finished in the top 5%
- Students with a cumulative GPA of 3.820 and above finished in the top 10%
- Students with a cumulative GPA of 3.772 and above finished in the top 15%
- Students with a cumulative GPA of 3.735 and above finished in the top 20%
- Students with a cumulative GPA of 3.700 and above finished in the top 25%
- Students with a cumulative GPA of 3.650 and above finished in the top 33%
- Students with a cumulative GPA of 3.563 and above finished in the top 50%

During the Winter 2020 term, a global pandemic required significant changes to course delivery. All courses used mandatory Pass/Fail grading. Consequently, the students who graduated in the May 2020 term graduated with five semesters of graded courses, rather than six.

A handwritten signature in black ink, appearing to read 'Rashida Y. Douglas'.

Rashida Y. Douglas
Law School Registrar & Director for the Office of Student Records



Haverford College Official Transcript

Name: Nicholas Armig Sweeney
Student ID: 4543564

Print Date: 03/17/2023

Academic Program History

Program: Haverford College Undergrad
05/18/2019: Completed Program
05/18/2019: Astrophysics at Haverford Major
05/18/2019: Philosophy at Haverford Minor

Degrees Awarded

Degree: Bachelor of Science
Confer Date: 05/18/2019
Degree Honors: Phi Beta Kappa Society
Degree Honors: Magna cum laude
Degree Honors: High Honors in Astrophysics
Plan: Astrophysics at Haverford
Plan: Philosophy at Haverford

Beginning of Undergraduate Record

Fall 2015

Course	Description	Credits	Grade
MATH AP2	Calculus BC AP	1.0	T

Transfer Totals: 1.0

Course	Description	Credits	Grade
MATH H121A	Calculus III	1.0	3.7
PHYS H105A	Fundamental Physics I	1.0	3.7
PSYC H100A	Foundations of Psychology	1.0	3.0
WRPR H140A	The Rhetoric of Argument	1.0	3.7

Semester Totals Credits 4.0 Sem GPA 3.525

Spring 2016

Course	Description	Credits	Grade
ASTR H152I	First-year Sem in Astrophysics	0.5	4.0
ECON H105B	Intro Economics	1.0	3.7
MATH H215B	Linear Algebra	1.0	4.0
PHYS H106B	Fundamental Physics II	1.0	4.0

Semester Totals Credits 3.5 Sem GPA 3.914

Fall 2016

Course	Description	Credits	Grade
ASTR H205A	Introduction to Astrophysics I	1.0	4.0
CMSC H105A	Intro to Computer Science	1.0	4.0
FREN H003A	Intermediate French NonInten.	1.0	3.7
PHYS H211F	Lab Electronics, Waves, Optics	0.0	WD
PHYS H213A	Waves and Optics	1.0	3.7

Semester Totals Credits 4.0 Sem GPA 3.850

Spring 2017

Course	Description	Credits	Grade
ASTR H206B	Intro Astrophys II	1.0	4.0
FREN H004B	Intermediate French	1.0	4.0
PHIL H102B	Modern Theories/Consciousness	1.0	4.0
PHYS H214B	Introductory Quantum Mechanics	1.0	4.0

Semester Totals Credits 4.0 Sem GPA 4.000

Fall 2017

Course	Description	Credits	Grade
FREN H101A	Introduction a l'analyse litte	1.0	3.3
PHIL H260A	HIST INTRO LOGIC	1.0	3.7
PHYS H211F	Lab Electronics, Waves, Optics	0.5	4.0
PHYS H303A	Statistical Physics	1.0	4.0
PHYS H412F	Res: Theor&Computatnl Phys	0.5	4.0

Semester Totals Credits 4.0 Sem GPA 3.750

Spring 2018

Course	Description	Credits	Grade
ASTR H344B	Advanced Topics: Cosmology	1.0	4.0
PHIL B221	Ethics	1.0	4.0
PHYS H309B	Adv Electromagntsm	1.0	4.0
PHYS H412I	Res: Theoretical&Computational	0.5	4.0

Semester Totals Credits 3.5 Sem GPA 4.000

Fall 2018

Course	Description	Credits	Grade
PHIL H210A	Plato	1.0	4.0
PHIL H335A	Topics in Modern European Phil	1.0	4.0
Course Topic:	Bergson and Heidegger		
PHYS H399F	Senior Seminar	0.5	4.0
PHYS H412F	Research Theor/Comp Physics	0.5	4.0
POLS B245	Philosophy of Law	1.0	4.0

Semester Totals Credits 4.0 Sem GPA 4.000

Spring 2019

Course	Description	Credits	Grade
ASTR H341B	Observational Astronomy	1.0	4.0
PHIL H310B	TOPIC:ANCIENT PHIL	1.0	3.7
Course Topic:	Memory, Imagination & Madness		
PHYS H302B	Advanced Quantum Mechanics	1.0	4.0
PHYS H399I	Senior Seminar	0.5	4.0
PHYS H412B	Research Theor/Comp Physics	1.0	4.0

Semester Totals Credits 4.5 Sem GPA 3.933

Undergraduate Career Totals Credits 32.5 Cum GPA 3.870

End of Haverford College Official Transcript



James Keane

James Keane, Registrar

OFFICE OF THE REGISTRAR
HAVERFORD COLLEGE
 370 LANCASTER AVENUE
 HAVERFORD, PA 19041-1392

EXPLANATION OF TRANSCRIPT

HAVERFORD SYSTEM OF GRADING

4.0	= A	Highest Grade
3.7	= A-	
3.3	= B+	
3.0	= B	
2.7	= B-	
2.3	= C+	
2.0	= C	
1.7	= C-	
1.3	= D+	
1.0	= D	Lowest Passing Grade
0.0	= F	
CIP	Course in Progress	
P	Pass - 1.0 or higher	
INC	Approved Incomplete	
W	Approved Withdrawal	
CR	Pass in a BM P/F Course	
NC	Failure in a BM P/F Course	

LENGTH OF ACADEMIC YEAR

Haverford's Academic Year contains two semesters as follows:
 Semester 1 – 67 Class Days plus a 7-Day Final Exam Period
 Semester 2 – 69 Class Days plus a 9-Day Final Exam Period

CLASS PERIODS:

55 Minutes in length on Monday/Wednesday/Friday
 90 Minutes in length on Tuesday/Thursday

COURSE NUMBERING SYSTEM

- DEPARTMENT CODE** – A four-letter code assigned to each Department;
 (e.g. BIOL for Biology)
- COURSE NUMBER**
 A three-digit number as follows:
 001-099 – Elementary/Intermediate languages
 100-199 – Courses without prerequisites
 200-299 – Second Year Courses
 300-399 – Advanced Courses
 400/460/480 – Senior Thesis/Teaching Fellow/Ind. Study
H preceding a course number is a Haverford Course
B preceding a course number is a Bryn Mawr Course
S preceding a course number is a Swarthmore Course
P preceding a course number is a U Penn Course

COURSE CREDIT SYSTEM

One Haverford credit is equal to 4.0 Sem. Hrs.
 One-half Haverford credit is equal to 2.0 Sem. Hrs.

Minimum credit requirement for the Degree:
 32 Credits equal to 128 Semester Hours

ACCREDITATION

Haverford College is accredited by the Middle States Association of Colleges and Secondary Schools, CHE

QUAKER CONSORTIUM

Through the Quaker Consortium, courses may be taken for credit at Bryn Mawr College, Swarthmore College, and the University of Pennsylvania during the academic year. Grades, credit values, and calculations for such courses are included on the student's Haverford transcript. Summer work at these colleges is **not** a part of the Consortium and is considered transfer credit.

**PLEASE DIRECT ALL QUESTIONS TO
 THE REGISTRAR
 HAVERFORD COLLEGE, HAVERFORD, PA 19041-1392
 PHONE: (610) 896-1233**

TO TEST FOR AUTHENTICITY: Translucent globe icons *MUST* be visible from both sides when held toward a light source. The face of this transcript is printed on red SCRIP-SAFE® paper with the name of the institution appearing in white type over the face of the entire document.

HAVERFORD COLLEGE•HAVERFORD COLLEGE• HAVERFORD COLLEGE • HAVERFORD COLLEGE • HAVERFORD COLLEGE •

ADDITIONAL TESTS: The institutional name and the word COPY appear on alternate rows as a latent image. When this paper is touched by fresh liquid bleach, an authentic document will stain brown. A black and white or color copy of this document is not an original and should not be accepted as an official institutional document. This document cannot be released to a third party without the written consent of the student. This is in accordance with the Family Educational Rights and Privacy Act of 1974. If you have any questions about this document, please contact our office. ALTERATION OF THIS DOCUMENT MAY BE A CRIMINAL OFFENSE!

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U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

March 22, 2023

To whom it may concern,

I am writing to recommend Nicholas Sweeney as a judicial law clerk. I have been an Assistant United States Attorney in the Southern District of New York for five years and am currently in the Money Laundering and Transnational Criminal Enterprises Unit. I served as one of Nick's two supervising attorneys during his internship at the U.S. Attorney's Office for the Southern District of New York from June to August 2022.

Nick and I worked closely throughout his internship, speaking almost daily. Nick is friendly and collegial, and I enjoyed working with him. He has a good-humored and enthusiastic attitude toward his work, and he demonstrated intellectual curiosity and a keen desire to learn. Nick was never shy about coming to my office to ask insightful questions about criminal procedure, research techniques, and office policies.

As an intern in our office, Nick demonstrated diligence, critical-thinking, and commitment. Over the summer, I assigned Nick a variety of legal research tasks to assist me in preparing for an upcoming money laundering trial and to address legal issues that arose in various financial investigations, including: the admissibility of voice identification evidence; the admissibility of various hearsay statements pursuant to the co-conspirator, statement against penal interest, and effect on the listener exceptions; the contours of a "good faith basis" to support cross examination; and an analysis of the venue requirements for bank fraud and false statements to a financial institution. Nick's research was thorough, and he provided thoughtful and concise analysis of the relevant cases. With respect to the venue analysis, Nick not only analyzed the relevant caselaw but also adeptly applied his analysis to the particular facts of our investigation to assist me in brainstorming potential venue theories for the case. Nick was able to handle open-ended and specific research questions, and he periodically checked in with me on his own initiative and asked follow-up questions as necessary to ensure that his research and analysis were focused on the relevant issues. Nick also drafted an opposition to a motion for a compassionate release and a sentencing letter for two different narcotics cases that were well-researched and written clearly, requiring minimal revisions. Nick responsibly set his own deadlines and returned assignments in a timely manner.

Nick demonstrated a strong work ethic and genuine enthusiasm. Nick took every opportunity offered to attend court proceedings, proffer sessions, or other meetings, and he attended numerous preparation sessions with witnesses for my upcoming trial, including volunteering to attend sessions on Friday evenings with a challenging witness that required an interpreter. Nick demonstrated initiative by conducting factual research to track down suppliers and distributors of prescription drugs relevant to the case, which helped us identify potential witnesses for trial and

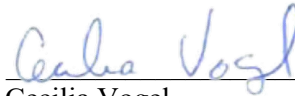
resolve important factual issues in the weeks before trial. Ultimately, Nick was so enthusiastic about participating in trial preparation that he extended his internship by two weeks.

I was particularly struck by Nick's commitment to work in public service. Over multiple conversations during the summer, Nick expressed that he was keen to work in the public interest as an attorney, and we discussed what steps he could take during law school to prepare himself for that work and different opportunities he could consider after law school to pursue a public interest career. Based on my recent conversations with Nick, I have learned that he continues to take steps to prepare himself for a public interest career, including participating in a clinic in which he examined multiple witnesses in an administrative hearing and securing an internship with a human rights organization in Geneva.

It was a true pleasure working with Nick, and I strongly recommend him to you as a clerk. I hope you will consider him for a clerkship position, and I would be happy to answer any further questions.

Sincerely,

by:



Cecilia Vogel
Assistant United States Attorney
(212) 637-1084
Cecilia.Vogel@usdoj.gov

June 12, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

It is with great enthusiasm that I write this recommendation for Nicholas ("Nick") Sweeney. Nick was my student during the Fall 2022 semester in the Civil-Criminal Litigation Clinic ("CCLC") at Michigan Law. The CCLC is a general litigation clinic in which law students work in teams of two on a variety of civil and criminal legal matters. I supervised Nick's case work and taught him in the seminar component of the clinic. He performed outstandingly well in all aspects of the course. Nick is a smart, detail-oriented, and thoughtful young man who I have no doubt would be an excellent judicial clerk.

I supervised Nick and his partner on a challenging eviction matter, an affirmative housing case, and a Child Protective Services central registry appeal. Nick earned an incredibly rare A+ on his casework, in recognition of his consistent dedication, hard work, and excellent work product. He and his partner truly took ownership of their cases, going above and beyond for all of their clients.

In the eviction matter, Nick and his partner worked hard to earn their client's trust, which was not immediately forthcoming due to her past trauma and mental health struggles. They worked effectively with their client's mental health caseworker to harmonize efforts on behalf of their client. Nick and his partner wrote a strong reasonable accommodation letter, and Nick also wrote two excellent legal memos that informed our strategy in the case. The legal memos reflected careful legal research and analysis, as well as elegant writing.

Nick and his partner also spent months preparing for a relatively complex administrative hearing in the CPS case. Nick chose to stay on with the clinic past the end of the semester to represent his client at the hearing. That decision reflected his dedication both to his client and to taking every opportunity to improve his skills as a lawyer. The hearing ended up taking five hours during which Nick and a new student partner conducted several lengthy direct and cross examinations, as well as delivering effective opening and closing statements. I was thoroughly impressed with Nick's performance during the hearing, as well as the more than 100 hours that he spent in preparation. Nick shows great promise as a trial attorney, should that be the path that he chooses to pursue. As part of the seminar component of the clinic, our students conduct an entire mock jury trial from motions in limine through verdict. Nick performed very strongly in this setting as well. Once again, his thorough preparation was apparent, as was his capacity for self-reflection during subsequent discussions.

Nick is open-minded and incorporates feedback effectively. He is a real team player and an all-around pleasure to work with. In sum, I have no hesitations in recommending Nick for a position as your clerk, and I urge you to give serious consideration to his application.

Sincerely,

Mira Edmonds
Clinical Assistant Professor of Law

Mira Edmonds - edmondm@umich.edu

UNIVERSITY OF MICHIGAN LAW SCHOOL
625 South State Street
Ann Arbor, Michigan 48109-1215

Daniel H. Halberstam
Eric Stein Collegiate Professor of Law
Director, European Legal Studies

June 12, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I am delighted to write in strong support of Nicholas Sweeney, who has applied for a clerkship in your chambers. Nick is an exceptionally talented and versatile young lawyer, who writes well and consistently analyzes difficult legal arguments with great care. I have no doubt he will make an excellent clerk in any chambers he is invited to join.

I first came to know Nick a couple of years ago when he took my constitutional law course as a first-year student. He was among the top five students of a very strong section. Nick was consistently prepared and came to class having digested the cases, ready to engage with productive questions and comments. I could always rely on him for our discussions and mock arguments, in which he performed admirably. Nick generally stood out for his mature analysis, especially when it came to politically difficult cases. His exam did not disappoint. It was well written and astutely analyzed all problems effectively – from Commerce Clause and “dormant” Commerce Clause questions to Section 5 of the 14th Amendment and stare decisis. He easily earned an “A” in that class.

As you might imagine, I was truly pleased to see Nick enroll in my course on European Union Law this past fall – essentially an introductory course on EU constitutional structure and rights. As it turns out, Nick speaks several languages, including French, Spanish, and Armenian, and has spent considerable time abroad, teaching in France and volunteering in Armenia. Nick was a quick study in EU law and in making effective constitutional arguments with regard to this foreign legal system. He chose to write an independent research paper for the course, which focused on minority representation rights in relation to secession. Within the confines of this term paper, his investigation deftly combined international law, EU law, and the distinctly European approach to fundamental rights analysis for a novel approach to secession claims. Again, Nick readily earned an “A”.

Given Nick’s academic performance and utmost professionalism in his general conduct, I have agreed this term to supervise an independent study in which he seeks to write a law review Note. Nick has provisionally chosen to consider the constitutional limits of the President’s power to withdraw from certain international agreements in the absence of Congressional approval. So far, we have met to discuss Nick’s proposed outline and thesis with the aim of refining the project to crystallize his original contribution. Nick has already impressed me by the amount of reading he has done on the project in developing a possible thesis. And he has been exceptionally responsive to my suggestions and conscientious in following through with yet further research and obtaining additional feedback from experts in the field.

Next to his interest in international law and human rights, Nick is also passionate about litigation, and in the near-term aspires to a position with the government (likely the Department of Justice) in litigation – be it civil or criminal. He’s been especially taken by the fascinating and varied work of a U.S. Attorney’s Office from his time last summer as an intern in the Office of the U.S. Attorney for the Southern District of New York. With any luck, he may be joining that office down the road as a junior attorney.

In summary, Nick is a most promising, earnest, and thorough young lawyer with a bright future. He is also highly congenial and professional with a broad set of interests. I recommend him to you most highly and without qualification. Please do not hesitate to contact me with any further questions you may have.

Yours sincerely,

Daniel H. Halberstam

Daniel Halberstam - dhalber@umich.edu - 734-763-4408

WRITING SAMPLE COVERSHEET

This writing sample below is a memorandum I wrote to my supervising AUSA while a legal intern at the U.S. Attorney's Office, Southern District of New York. My supervising AUSA advised me that the memo should be written as a draft of the letter brief he was required to submit to the Court. I received permission from the U.S. Attorney's Office to use this memorandum as a writing sample.

I adhere to SDNY conventions for citations where applicable and defer to Bluebook citation style in all other cases. In conformity with office policy at the U.S. Attorney's Office, I have removed the defendant's name. I have not received outside editing on this work.

TO: Daniel Wolf, Assistant U.S. Attorney, Southern District of New York

FROM: Nicholas Sweeney

DATE: June 21, 2022

RE: Whether the base offense level for the Defendant's 18 U.S.C. § 1594(c) conviction was correctly calculated by the presentence investigation report.

I. INTRODUCTION

The question posed is whether, under the United States Sentencing Guidelines (“U.S.S.G.” or the “Guidelines”), a defendant convicted of a sex trafficking conspiracy pursuant to 18 U.S.C. § 1594(c) should be assigned the enhanced base offense level of 34, as he would be if convicted of the substantive offense defined in 18 U.S.C. § 1591(b). In this case, the enhanced base offense level of 34 should be assigned.

On February 26, 2019, the Defendant was charged in a one-count indictment under § 1594(c) for conspiring to commit sex trafficking by force, fraud, or coercion in violation of §§ 1591(a)(1), (a)(2), and (b). *See* Indictment (19 Cr. 131) ¶ 1. On June 11, 2021, the Defendant was convicted by a jury as charged. The Final Presentence Report (PSR) determined the Defendant's base offense level to be 34 according to U.S.S.G. § 2G1.1(a)(1). The Defendant objected, citing the Ninth Circuit Case, *United States v. Wei Lin*, 841 F.3d 823 (9th Cir. 2016).

The reasoning from *Wei Lin* should not be endorsed here. First, as other circuits have observed, the plain meaning of relevant Sentencing Guidelines provisions requires that sex trafficking conspiracies be treated in the same manner as their substantive offenses. Second, other circuits have noted that lowering the base offense level of a sex trafficking conspiracy compared to the that of a substantive offense would lead to absurd and structurally inconsistent results. Finally, all cases addressing this issue in this District have rejected *Wei Lin* and imposed the enhanced base offense level.

II. LEGAL BACKGROUND

Ordinarily, the base offense level for a federal crime is determined by identifying the appropriate Guidelines provision in Chapter 2 of the United States Sentencing Guidelines. *See* U.S.S.G. § 1B1.2(a). However, when the crime is a conspiracy, a judge must begin by looking to § 1B1.2: “If the offense involved a conspiracy, attempt, or solicitation, refer to § 2X1.1 (Attempt, Solicitation, or Conspiracy) as well as the guideline referenced in the Statutory Index for the substantive offense.” *United States v. Sims*, 957 F.3d 362, 363 (3d Cir. 2019), *cert. denied*, 141 S.Ct. 404; U.S.S.G. § 1B1.2(a). Conspiracy under 18 U.S.C. 1594(c) is not listed in the Statutory Index, so courts have turned directly to § 2X1.1 to assess the base offense level.

Section 2X1.1(a) sets the base level for Conspiracy as “[the level] from the guideline for the substantive offense, plus any adjustments from such guideline for any intended offense conduct that can be established with reasonable certainty.” Here, the Defendant was convicted of conspiring to violate 18 U.S.C. §§ 1591(a)(1), (a)(2), and (b)(1), which describe the offense of “[s]ex trafficking of children or by force, fraud, or coercion.” *See* PSR (19 Cr. 131) ¶ 26. As described in the indictment, the Defendant’s use of force and coercion was directed uniquely toward Victim-2. *See* Indictment ¶ 3(c). If the victim were a minor, then the base offense level corresponding to the substantive offense would be given by U.S.S.G. § 2G1.3. Since the victim of the Defendant’s crime was not a minor, however, the provision associated with the Defendant’s substantive offense is U.S.S.G. § 2G1.1, which sets a base offense level of 34 if the “offense of conviction” is designated by § 1591(b)(1), or 14 otherwise. U.S.S.G. 2G1.1(a)(1–2).

Courts have disagreed about which base offense level applies to conspiracies evaluated through § 2G1.1 when there is a cross-reference with § 2X1.1(a). *Wei Lin*, 841 F.3d 823 (9th Cir. 2016); *Sims*, 957 F.3d at 362; *United States v. Carter*, 960 F.3d 1007 (8th Cir. 2020), *cert.*

denied, 141 S. Ct. 835 (2020); *United States v. Valdez*, No. 19-12522, 2021 WL 3478402 at *1 (11th Cir. Aug. 9, 2021). In *Wei Lin*, the defendant pled guilty to a conspiracy count, 18 U.S.C. § 1594(c). *Wei Lin*, 841 F.3d at 825. The court held that this result did not warrant the heightened base offense level of 34 in § 2G1.1. *Id.* at 823. First, the court reasoned that it would be improper to apply § 2G1.1(a)(1) given that the text of § 2G1.1(a)(1) expressly requires an “offense of conviction” pursuant to § 1591(b)(1), and the conviction in this case was under § 1594(c). *Id.* at 826. The court also considered to legislative history. Judge Farris identified that the higher base offense level in § 2G1.1(a)(1) was added in response to Congress’s adoption of the fifteen-year mandatory minimum in 18 U.S.C. § 1591(b)(1), ostensibly linking the heightened offense level with the substantive sex trafficking offense. *Id.* at 827. He also argued that since the Sentencing Commission “knew how to require [a conduct-based] comparison explicitly, and did not do so,” a literal reading of the § 1591(b)(1) conviction requirement is appropriate. *Id.*

However, circuit courts that have considered this issue since *Wei Lin* have concluded oppositely. *Sims*, 957 F.3d at 362; *Carter*, 960 F.3d at 1007; *Valdez*, 2021 WL 3478402 at *1. In *Sims*, the defendant also pled guilty to 18 U.S.C. § 1594(c), but the Third Circuit held that the heightened base offense level in § 2G1.1(a)(1) applied. *Sims*, 957 F.3d at 362. The Court argued that § 2G1.1 “cannot be interpreted in isolation” of § 2X1.1., *Id.* at 364, and determined that when the two provisions are read together, the base level for a sex trafficking conspiracy is simply that of the substantive offense. *Id.* at 364-65. Judge Hardiman also recognized the “absurd results” that would follow from setting a substantially lower base offense level for conspiracies under 2X1.1 than for their substantive offenses. *Id.* at 364. Likewise, in *Carter*, the Eighth Circuit imposed the heightened base offense level for three defendants who pleaded guilty to violations of 18 U.S.C. § 1594(c). *Carter*, 960 F.3d at 1007. While reiterating a desire

to avoid “absurd results,” *Id.* at 1014, and emphasizing that § 2G1.1 must be read “in light of” § 2X.1.1, *Id.*, the court added that commentary in Chapter 1 of the Guidelines supported an understanding that a conspiracy is to be accorded the same base offense level as its corresponding substantive offense. *Id.*; U.S.S.G. § 1B1.3, cmt. n.7. Finally, in *Valdez*, the defendant pled guilty to conspiring to sexually traffic a minor under § 1594(c). *Valdez*, 2021 WL 3478402 at *1. Because the victim was between the ages of 14 and 18 and the offense did not involve force, fraud, or coercion, the underlying substantive offense was § 1591(b)(2). *Id.* at *4. Similarly to *Sims* and *Carter*, The Eleventh Circuit held that the base offense level for § 1591(b)(2)—a level of 30—was proper given the plain meaning and commentary of the applicable guidelines. *Id.* at *5.

III. DISCUSSION

The heightened base offense level advocated for by the Third, Eighth, and Eleventh Circuits should be applied here for three independent reasons. First, such a reading better conforms with the text of § 2X1.1 and § 2G1.1. Second, it guards against the absurd results that would follow from violating the structural integrity of the United States Sentencing Guidelines and the Criminal Code. Third, this interpretation is consistent with existing case law in this District.

A. A Textual Analysis of § 2X1.1 and § 2G1.1 Favors an Enhanced Base Offense Level

A textual examination of U.S.S.G. §§ 2X1.1 and 2G1.1 demonstrates that 18 U.S.C. § 1594(c) convictions must receive the heightened base offense of 34. In the case of Conspiracy, § 2X1.1(a) states that the base offense level is “the base offense level from the guideline for the substantive offense, plus any adjustments from such guideline or any intended offense conduct

that can be established with reasonable certainty.” U.S.S.G. § 2X1.1(a). Generally, this means that the base offense level for a conspiracy “will be the same as that for the substantive offense.” *Id.* cmt. n.2. For offenses involving the “Promot[ion] [of] a commercial sex act or prohibited sexual contact with an individual other than a minor,” § 2G1.1 provides that the base offense level is 34 if the “offense of conviction” is 18 U.S.C. 1591(b)(1), or 14 otherwise. U.S.S.G. § 2G1.1(a)(1). By (1) reading § 2G1.1 together with § 2X1.1, (2) examining the Guidelines’ definition for “offense of conviction,” and (3) placing interpretive value in the commentary of the Guidelines, it is clear that a base offense level of 34 must be applied. The purported intent of the Sentencing Commission should not outweigh what the plain meaning of the Guidelines indicates.

1. Sections 2X1.1 and 2G1.1 Must Be Read Together

Reading § 2G1.1 in the context of § 2X1.1 clarifies that the base offense level enhancement for § 1591(b)(1) also applies for § 1594(c). As a starting point, courts recognize that “as with statutory language, the plain and unambiguous language of the Sentencing Guidelines affords the best recourse for their proper interpretation.” *United States v. Millar*, 79 F.3d 338, 346 (2d Cir. 1996). In doing so, all terms in the Guidelines should be given their “ordinary meanings.” *United States v. Mullings*, 330 F.3d 123, 124-35 (2d Cir. 2003). Yet, to fully capture the plain meaning of a statute, courts must “[Look] to the statutory scheme as a whole and [place] the particular provision within the context of the statute.” *Saks v. Franklin Covey Co.*, 316 F.3d 337, 345 (2d Cir. 2003) (quoting *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988)). The Second Circuit has used this rule to interpret the plain meaning of individual Guidelines provisions based on how those provisions function within the context and structure of the Guidelines as a whole. *See United States v. Manas*, 272 F.3d 159, 167 (2d Cir.

2001), *cert. denied*, 537 U.S. 1176 (2003); *United States v. Kennedy*, 233 F.3d 157, 163 (2d Cir. 2000).

Here, in order to ensure that the structure and scheme of the Guidelines are upheld, § 2G1.1 and § 2X1.1 must be read together. *Carter*, 960 F.3d at 1014; *Sims*, 967 F.3d at 364; *Valdez*, 2021 WL 3478402 at *5. *Wei Lin* did not acknowledge this and instead relied on what appeared to be a “straightforward interpretation of U.S.S.G. § 2G1.1(a)(1)” considered on its own. *Wei Lin*, 841 F.3d at 826. However, § 2G1.1(a)(1) must not be considered in isolation because Chapter 1, which provides “General Application Principles,” expressly directs the judge to apply § 2X1.1 before any other offense-related provisions. U.S.S.G. § 1B1.2; *see also Sims* 967 F.3d at 363; *Valdez*, 2021 WL 3478402 at *4.

Examining § 2G1.1 and § 2X1.1 together, the plain and unambiguous language of § 2X1.1 expresses that the base offense level is that of the “substantive offense,” where the substantive offense is “the offense that the defendant was convicted of soliciting, attempting or conspiring to commit.” U.S.S.G. § 2X1.1(a) & cmt. n.2. In this case, the Defendant was convicted of conspiring to commit sex trafficking in violation 18 U.S.C. §§ 1591(a)(1), (a)(2), and (b). *See* PSR ¶ 26. Thus, § 18 U.S.C. 1591(b)(1) qualifies as a substantive offense. Since § 2G1.1(a)(1) designates that § 18 U.S.C. 1591(b)(1) convictions have a base offense level of 34, the Defendant’s § 18 U.S.C. § 1594(c) conviction should also receive a base offense level of 34.

Accepting that § 2X1.1 and § 2G1.1 must be read together, the term “base offense level” provides another reason for directly applying the base offense level of the substantive offense. Section 2X1.1 does not “instruct courts to apply the ‘Guidelines Section’” relating to the substantive offense. *Sims*, 957 F.3d at 364. Rather, it “requires courts to apply the ‘base offense level’ for the substantive offense.” *Id.* (quoting U.S.S.G. § 2X1.1(a)). As a result, the base

offense level of 34 should be directly applied for § 1594(c) convictions without walking through a fully independent application of § 2G1.1.

2. Definition of “Offense of Conviction”

The definition of “offense of conviction” in the Sentencing Guidelines also extends the enhancement in § 2G1.1(a)(1) to the Defendant’s conviction under 18 U.S.C. § 1594(c). The Second Circuit recognizes that when a term from a statute or the Guidelines is “otherwise defined,” the definition given may outweigh the term’s ordinary meaning. *United States v. Martinez-Santos*, 184 F.3d 196 (2d Cir. 1999).

Here, § 1B1.2(a) indicates that the “offense of conviction” is “the offense conduct charged in the count of the indictment or information of which the defendant was convicted.” U.S.S.G. § 1B1.2(a). In light of this definition, § 2G1.1(a)(1) should be read to require a base offense level of 34, so long as the defendant’s conduct matches the conduct proscribed by § 1591(b)(1). *Sims*, 957 F.3d at 365; *United States v. Li*, No. 1:12-CR-00012-2, 2013 WL 638601 at *2 (D.N. Mar. I. Feb. 21, 2013). In *Sims*, the Eighth Circuit held that the enhanced base offense level in § 2G1.1(a)(1) was appropriate for a § 1594(c) conviction because the defendant’s conduct was “identical to that proscribed in § 1591(b)(1).” 957 F.3d at 365. Similarly, in *Li*, the district court held that because “a conspiracy to violate Section 1591 involves the same conduct as a substantive violation,” the base offense level of the substantive offense should apply. *Li*, 2013 WL 638601 at *3.

Here, the Defendant’s conduct was also identical to what is proscribed in § 1591(b)(1). The relevant conduct covered by § 1591(b)(1) involves the “[s]ex trafficking of children or by force, fraud, or coercion.” The Defendant’s indictment for his count of conviction indicates that his conduct matches the description of sex trafficking by force and coercion articulated in §

1591(b)(1). The Defendant forced and coerced “Victim-2” to “engage in commercial sex acts” through physical violence, threats of deadly force, and the conditional withholding of heroin, a drug that the Defendant knew Victim-2 was addicted to. *See* Indictment ¶ 3(c). Thus, the Defendant should be allotted the enhanced base offense level, corresponding with § 2G1.1(a)(1).

Still, the court in *Wei Lin* stated that the description of the “offense of conviction” in terms of “offense conduct” in § 1B1.2(a) is not a “general definition.” 841 F.3d at 826. The court in accepted that this conduct-based definition applied to the determination of the proper “offense guidelines section.” *Id.* However, the court refused to extend the conduct-based definition to provisions where the term “offense of conviction” pertained to a specific statute and instead advocated for a direct “matching exercise” with the statute listed in the judgment for the defendant. *Id.*

With that said, the argument in *Wei Lin* for limiting the “offense of conviction” definition is not persuasive because there is a “presumption of consistent usage when interpreting the Sentencing Guidelines.” *Sims*, 957 F.3d at 365 (quoting *Pereira v. Sessions*, 138 S. Ct. 2105, 2115 (2018)). Moreover, the phrase “offense of conviction” has been broadly interpreted to extend to “all conduct in furtherance of the offense of conviction.” *Id.* (citing *United States v. Murillo*, 933 F.2d 195, 199 (3d Cir. 1991)).

3. Guidelines Commentary

Third, the commentary following § 1B1.3 confirms that conspiracies are to be assigned the same base offense level as their substantive offenses. The Supreme Court has held that “commentary that interprets or explains a guideline is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or entails a plainly erroneous reading of, the guideline.” *Stinson v. United States*, 508 U.S. 36, 38 (1993). Here, § 1B1.3, comment 7

states: “[A]n express direction to apply a particular factor only if the defendant was convicted of a particular statute includes the determination of the offense level where the defendant was convicted of a conspiracy” Thus, even ignoring the interplay between § 2X1.1 and § 2G1.1 and the conduct-based definition of “offense of conviction,” courts have recognized that there is still conclusive support for applying a base offense level of 34 to conspiracies under § 1594(c). *Carter*, 960 F.3d at 1014; *Valdez*, 2021 WL 3478402 at *5.

4. Unambiguous Plain Language Negates *Wei Lin*’s Reliance on the Sentencing Commission’s Intent

Wei Lin’s reliance on the Sentencing Commission’s intent in adding § 2G1.1(a)(1) to the Guidelines should not sway the Court’s reasoning in this case. In *Wei Lin*, the court noted that the defendant’s guilty plea to 18 U.S.C. § 1594(c) did not carry a mandatory minimum. *Wei Lin*, 841 F.3d at 825. It then reasoned because § 2G1.1(a)(1) was “created in direct response” to Congress’s inclusion of a 15-year mandatory minimum in 18 U.S.C. § 1591(b)(1), the Sentencing Commission did not intend for the enhancement in § 2G1.1(a)(1) to be activated without the presence of the mandatory minimum. *Id.* at 827. Separately, the Ninth Circuit inferred that the Commission’s failure to make explicit a conduct-based assessment for the base offense level, when it knew how to do so, weighed in favor of a strict interpretation of § 2G1.1(a)(1). *Id.*

In spite of these arguments, the courts need not consider other if interpretive sources if “language [of a statute] is plain and its meaning is sufficiently clear.” *Novak v. Kasaks*, 261 F.3d 300, 310 (2d Cir. 2000), *cert. denied*, 531 U.S. 1012 (2000); *see also Carter*, 960 F.3d at 1014. In *Carter*, the Eighth Circuit held that considerations regarding the Sentencing Commission’s intentions were impertinent to whether § 1594(c) received an enhanced base offense level since

there was “no ambiguity” in how the text of § 2X1.1 required § 2G1.1(a)(1) to be applied. 960 F.3d at 1014. Likewise, for the reasons described thus far in this case, the text of the Guidelines unambiguously requires the court to assess the Defendant’s § 1594(c) conviction as having the same base offense level as § 1591(b)(1). Thus, concerns about the Commission’s intent have little import.

In summary, the interplay between § 2G1.1 and § 2X1.1, the definition of “offense of conviction,” and the commentary in § 1B1.3 establish that the enhanced base offense level of 34 must apply to the Defendant’s conviction under § 1594(c). Speculations about the Sentencing Commission’s intent should not override these features in the plain text of the Guidelines.

B. An Enhanced Base Offense Level Preserves the Structural Integrity of the Sentencing Guidelines and the Criminal Code

A base offense level assignment of 34 for the Defendant’s § 1594(c) conviction is appropriate because it avoids structural inconsistencies that would follow from treating sex trafficking conspiracies differently than their substantive offenses. If an interpretation of the Guidelines entails absurd results, these results should weigh against such an interpretation. *United States v. Pope*, 554 F.3d 240, 246 (2d Cir. 2009). Applying the § 2G1.1(a)(2) base offense level of 14 to § 1594(c) convictions would lead to absurd results for two reasons. First, it would generate significantly lower Guidelines recommendations for sex trafficking conspiracies than for less pernicious crimes. Second, it would improperly group § 1594(c) with nonviolent offenses that, contrary to § 1594(c), set maximum terms of imprisonment under Title 18.

1. Wei Lin Violates the Structural Integrity of the Sentencing Guidelines

The Defendant should not be assigned the base offense level of 14 for his § 1594(c) conviction because this would impose a lower sentence than is typical for less severe offenses.

An interpretation of a statute should not be enforced if it is “fundamentally inconsistent” with the structure of the statute. *Off. & Pro. Emp. Int’l Union v. NLRB*, 981 F.2d 76, 81 (2d Cir. 1992). This rule pertains to the Guidelines because the interpretation of Guidelines should consider the “basic rules of statutory construction.” *United States v. Mullings*, 330 F.3d 123, 124 (2d Cir. 2003).

Applying a base offense level of 14 in the Defendant’s case would be fundamentally inconsistent with the structure of the Guidelines. For example, labor trafficking offenses are given a standard base offense level of 22 under the Guidelines. U.S.S.G. § 2H4.1(a)(1). Accordingly, based on the reasoning of *Wei Lin*, someone with the Defendant’s criminal history who is convicted of labor trafficking would receive a sentence of between 84 and 105 months for labor trafficking, but only a sentence of between 37 and 46 months for a sex trafficking conspiracy. *See* PSR ¶ 172 (determining that the Defendant has a criminal history of VI). Such a result would violate the structure and purpose of the Guidelines since sex trafficking is “an especially pernicious form of labor trafficking.” *Sims* 957 F.3d at 364 (determining that it would be “inconceivable” that the Sentencing Commission would intend to punish forced labor conspiracies more than twice as harshly as sex trafficking conspiracies). In *Sims*, the court imposed a base offense level of 34, paying special attention to the egregiousness of the defendant’s conduct in comparison to a labor trafficking offense. *Id.* Specifically, the defendant “contributed to the forced prostitution, abuse, and drug addiction of numerous young women.” *Id.* Moreover, *Sims* was a “‘respect[ed]’ member of a gang that ‘sexed’ women into its employ by forcing them to have sex with a succession of gang members.” *Id.*

Here, the Defendant’s conduct is similarly egregious. He coerced “Victim 2” into performing “commercial sex acts” by “physically assaulting” her, “threatening” her,

“brandishing a dangerous weapon” at her, and “withholding heroin from her . . . with knowledge and understanding that [she] was addicted to heroin.” *See* Indictment ¶ 3(c). Hence, the holding from *Wei Lin* should not apply here, and the Defendant should receive the base offense level of 34, which is consistent in severity with the general structure of the Guidelines.

2. *Wei Lin* Violates the Structural Integrity of Title 18

Second, the Defendant should not be assigned a base level of 14 for his § 1594(c) conviction because this would disregard how Title 18 treats § 1594(c) convictions differently than offenses typically receiving a base offense level of 14. In establishing the Sentencing Commission, 28 U.S.C. § 994 states: “The Commission . . . shall, for each category of offense involving each category of defendant, establish a sentencing range that is consistent with all pertinent provisions of title 18, United States Code.” 29 U.S.C. § 994(b)(1). Furthermore, the Second Circuit has recognized that when an agency is tasked with regulating pursuant to a statute, the court will not defer to an agency interpretation that is “arbitrary, capricious, or manifestly contrary to the statute.” *Adams v. Holder*, 692 F.3d 91, 95 (2d Cir. 2012) (quoting *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984)); *see also Auburn Hous. Auth. v. Martinez*, 277 F.3d 139, 144 (2d Cir. 2002).

Categorizing 18 U.S.C. § 1594(c) with statutes that are assigned a base offense level of 14 would be inconsistent with the structure of Title 18, as those statutes provide maximum terms of imprisonment and involve largely nonviolent conduct. In addition to 18 U.S.C. § 1591, 8 U.S.C. § 1328 and 18 U.S.C. §§ 2421, 2422(a) are offenses with base levels evaluated through § 2G1.1 (assuming the offenses involve a victim other than a minor). U.S.S.G. § 2G1.1 cmt. stat. provisions. In contrast to 18 U.S.C. § 1591(b)(1), these offenses are accorded a base offense level of 14. *See* U.S.S.G. § 2G1.1(a)(2); *see also United States v. Hurant*, 16 Cr. 45 (MKB),

2017 WL 3327581 at *1 (E.D.N.Y. Aug. 17, 2017). 8 U.S.C. § 1328 and 18 U.S.C. §§ 2421, 2422(a) expressly limit the maximum imprisonment for these offenses to ten years, ten years, and ten years, respectively. On the other hand, 18 U.S.C. § 1594(c) has a maximum term of imprisonment of “any terms of life,” indicating that it prohibits conduct that is more severe and punishable. Additionally, 8 U.S.C. § 1328 and 18 U.S.C. § 2421 do not concern violent conduct, and § 2422(a) rarely concerns violent conduct. Yet, the Defendant’s § 1594(c) conviction, like the convictions in *Sims and Carter*, see *Sims*, 957 F.3d at 364; *Carter*, 960 F.3d at 1010, involves violent conduct observable in his use of force and coercion. This provides further reason for distinguishing § 1594(c) from statutes that are assigned the lower base offense level. Thus, a reading of the Guidelines assigning § 1594(c) an equivalent base level to that of these other offenses would be “manifestly contrary” to 28 U.S.C. § 994. See *Chevron*, 467 U.S. at 844. In order to ensure that the Sentencing Guidelines remain consistent with the penalties set forth in Title 18, the § 2G1.1(a)(1) enhancement should apply to 18 U.S.C. § 1594(c) convictions such as the Defendant’s.

In full, because the *Wei Lin* holding creates absurd, structurally inconsistent results in relation to the Sentencing Guidelines and Title 18, the Court should reject it and apply the enhanced base offense level of 34 for the Defendant’s § 1594(c) conviction.

C. Case law in the Southern District of New York Applies the Enhanced Base Offense Level

Finally, A base offense level of 34 should be applied to the Defendant’s § 1594(c) conviction because such a decision would be consistent with prior rulings in this District. Recently, in *United States v. Vanier*, the court expressly recognized that *Wei Lin* was not applicable to the Sentencing Guidelines calculation for § 1594(c), thereby agreeing with the

reasoning set forth by the Third and Eighth Circuits in *Sims* and *Carter*. *United States v. Vanier*, 18 Cr. 873 (VSB), 2021 WL 5989773 at *12 n.11 (S.D.N.Y. Dec. 17, 2021). Additionally, this court has a thorough history of applying the enhanced base offense level for defendants convicted of sex trafficking conspiracies.

In *Vanier*, the defendant pled guilty to a superseding information charging him with conspiracy to commit sex trafficking 18 U.S.C. § 1594(c). As in *United States v. Valdez*, the victim in *Vanier* was a minor, *Id.* at *3, so the base offense level was governed by § 2G1.3. The Superseding Information did not mention the penalty provisions in § (b)(1) or § (b)(2), but it did refer to the defendant’s use of “force, threats of force, [and] coercion” during his engagement in the sex trafficking. *Id.* Accordingly, because the allegations in the Superseding Information “matched” the relevant language in § 1591(b)(1) “related to force, fraud, or coercion,” and Varnier’s allocution satisfied the requisite elements of § 1591(a), Judge Broderick held that the heightened base offense level of 34 applied. Sentencing Tr. at 11:12-16, *United States v. Vanier*, 18 Cr. 873 (VSB), 2021 WL 5989773 at *12 (S.D.N.Y. Dec. 17, 2021). The choice to apply the base offense level enhancement, without a count listed under § 1591(b)(1), bolsters the view proposed by *Sims* and *Li* that the term “offense of conviction” tracks with the conduct of the offense rather than the literal offense of conviction. More importantly, in *Vanier*, Judge Broderick articulated that he agreed with the Third and Eighth Circuit decisions, *Sims* and *Carter*, rejecting *Wei Lin*. *Vanier*, 2021 WL 5989773, at *12 n.11 (criticizing how the Ninth Circuit’s decision would drastically lower sentences for defendants convicted under § 1594(c) compared to those convicted of the substantive offense).

Other cases have also demonstrated this District’s acceptance of the view that § 1594(c) convictions should receive the same base offense level as their substantive offenses. In *United*

States v. Pierre-Louis, 16 Cr. 541 (CM), 2019 WL 2235886 (S.D.N.Y. May 15, 2019), Judge McMahon held that the defendant’s conviction under § 1594(c) of conspiring to violate §§ 1591(a)(1) and (b)(1), required a base offense level of 34. Judge McMahon reasoned that “the base offense level for the conspiracy is the same as the base offense level for the substantive offense,” and, in that case the base offense level for the substantive offense was 34. *Id.*

Analogously, In *United States v. Almonte*, 16 Cr. 670 (KMW), 2020 WL 6482874 (S.D.N.Y. Nov. 4, 2020), the count of conviction was § 1594(c), but this time as a conspiracy to violate § 1591(b)(2). Judge Wood rejected the defense council’s argument, founded on *Wei Lin*, that a base offense level of 14 should be applied and instead held for a base offense level of 30, which corresponds to convictions under § 1591(b)(2). *Id.* See also *United States v. Goddard*, 17 Cr. 439 (LAP), 2018 WL 4440503 (S.D.N.Y. Sep. 17, 2018) (concluding that, for a conspiracy under 1594(c) to violate § 1591(b)(2), a base offense level of 30 applied).

Like the defendants in each of these cases, the Defendant here was convicted under § 1594(c) and has similarly objected, citing *Wei Lin*. The court should follow its prior rulings and impose the base offense level of 34.

IV. CONCLUSION

The base offense level for the Defendant’s 18 U.S.C. § 1594(c) conviction was correctly calculated by the PSR to be 34. The Defendant’s objection, citing *Wei Lin*, is misguided because it misconstrues the text of U.S.S.G. §§ 2G1.1 and 2X1.1, violates the structure of the Guidelines and Title 18, and is inconsistent with the prior reasoning in this District.

Applicant Details

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 JD/LLB From **University of Virginia School of Law**
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 Date of JD/LLB **May 19, 2024**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Virginia Law Review**
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 Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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June 1, 2023

The Honorable John M. Walker, Jr.
Connecticut Financial Center
157 Church St., 17th Floor
New Haven, CT 6510-2100

Dear Judge Walker:

I am a rising third-year student at the University of Virginia School of Law, and I am writing to apply for a clerkship in your chambers beginning in the fall of 2025.

I have enclosed my resume, law school and undergraduate transcripts, and a writing sample. You will also receive letters of recommendation from Professors Lawrence Solum, Micah Schwartzman, and Cynthia Nicoletti. All professors have said that they would be happy to speak with you directly. If you would like to reach them, Professor Solum's telephone number is (434) 982-2543, Professor Schwartzman's is (434) 924-7848, and Professor Nicoletti's is (434) 243-8540.

Please reach out to me at the phone number or email above if I can offer additional information. I appreciate your consideration.

Sincerely,

Mary Triplett

Mary G. Triplett

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EDUCATION

University of Virginia School of Law, Charlottesville, VA

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- GPA: 3.77
- Virginia Law Review, Articles Editor
- Research Assistant to Professor Micah Schwartzman
- Norton Rose Fulbright Best Memo Award
- Author and Advocate for Campus Safety Reform Initiative
- Lambda Law Alliance, Member
- Peer Advisor

Wake Forest University, Winston-Salem, NC

B.S., Mathematical Economics (Minors: Politics and International Affairs, Religion), May 2021

- GPA: 3.93
- Honors: Phi Beta Kappa
- Carswell Scholarship Program, Thomas E. and Ruth Mullen Scholar

EXPERIENCE

United States District Court for the Eastern District of Virginia, Alexandria, VA

Term Law Clerk for The Honorable T.S. Ellis III, Expected August 2024 – September 2025

Latham & Watkins, Washington, DC

Summer Associate, Expected May 2023 – August 2023

Hunton Andrews Kurth, Washington, DC

Summer Associate, May 2022 – August 2022

- Analyzed case law and secondary sources to resolve legal questions in antitrust, data privacy, and criminal defense matters
- Drafted internal memoranda and motion to dismiss in conjunction with these cases

Wake Forest Peer Tutoring, Winston-Salem, NC

Math Center and Learning Assistance Center Tutor, September 2019 – May 2021

- Advised students on their mathematics progress with assessments and exam review

Keybridge Consulting, Washington, DC

Social Responsibility and Accountability Intern, June 2020 – August 2020

- Analyzed and reported on McDonald's nutrition information in 20 major markets
- Performed calculations to assess McDonald's progress on corporate responsibility goals

Edgeworth Economics, Washington, DC

Economic Consulting Intern, June 2019 – August 2019

- Performed statistical analysis for expert reports in antitrust and employment cases

INTERESTS

Hosting Dinner Parties, Hiking, Basketball, American History

UNIVERSITY OF VIRGINIA
SCHOOL OF LAW

Name: Mary Triplett

Date: June 06, 2023

Record ID: mgt6bs

This is a report of law and selected non-law course work (including credits earned). This is not an official transcript.

Due to the global COVID-19 pandemic, the Law faculty imposed mandatory Credit/No Credit grading for all graded classes completed after March 18 in the spring 2020 term.

FALL 2021

LAW	6000	Civil Procedure	4	A	Solum, Lawrence
LAW	6002	Contracts	4	A	Hellman, Deborah
LAW	6003	Criminal Law	3	A-	Jeffries Jr., John C
LAW	6004	Legal Research and Writing I	1	S	Fore Jr., Joe
LAW	6007	Torts	4	B+	Cope, Kevin

SPRING 2022

LAW	7160	Computer Crime	3	A	Bamzai, Aditya
LAW	6001	Constitutional Law	4	A-	Mahoney, Julia D
LAW	7023	Emply Law: Contrcts/Torts/Stat	3	B+	Verkerke, J H
LAW	6005	Lgl Research & Writing II (YR)	2	S	Fore Jr., Joe
LAW	6006	Property	4	A	Hynes, Richard M

FALL 2022

LAW	7017	Con Law II: Religious Liberty	3	A-	Schwartzman, Micah Jacob
LAW	7009	Criminal Procedure Survey	4	B+	Harmon, Rachel A
LAW	7648	Federal Sentencing (SC)	1	A-	Underhill, Stefan R
LAW	7140	History of American Federalism	3	A	Nicoletti, Cynthia Lisa
LAW	7067	National Security Law	3	A-	Deeks, Ashley

SPRING 2023

LAW	6102	Administrative Law	3	A	Woolhandler, Nettie A
LAW	8003	Civil Rights Litigation	3	A	Frampton, Thomas Ward
LAW	7103	Education Law Survey	3	A	Robinson, Kimberly Jenkins
LAW	6104	Evidence	4	A-	Mitchell, Paul Gregory
LAW	7612	Genetics: Exerc Rule-Mkg (SC)	1	A	Siegal, Gil
LAW	8814	Independent Research (YR)	0	YR	Solum, Lawrence

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Entry Date: 08/01/2017
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Undergraduate Division

Date Printed 26-NOV-2021 Page: 1

Issued To: Mary Triplett
Parchment: 36914127

Course Level: Undergraduate

Degrees Awarded Bachelor of Science 17-MAY-2021
Ehrs: 138.50 GPA-Hrs: 112.00 QPts: 441.070 GPA: 3.938
Primary Degree

Major : Mathematical Economics
Minor : Religious Studies
Politics & Int'l Affairs
Inst. Honors: Summa Cum Laude

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
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TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:

Fall 2017 Advanced Placement Credit

BIO 111	Biological Principles	4.00 AP	
HST 103	World Civ to 1500	3.00 AP	
HST 150	United States History	3.00 AP	
LAT 153	Intermediate Latin	0.00 AP	
MST 112	Calculus/Analytic Geom II	4.00 AP	
PHY 111	Mechanics Waves & Heat	4.00 AP	
WRI 111	Writing Seminar	4.00 AP	
Ehrs: 22.00 GPA-Hrs: 0.00 QPts: 0.000 GPA: 0.000			

INSTITUTION CREDIT:

Fall 2017

ENG 150	Lit Interprets the World	3.00 A	12.000
HES 100	Lifestyles and Health	1.00 A	4.000
HES 101	Exercise for Health	1.00 A	4.000
LAT 211	Intro to Latin Poetry	3.00 A	12.000
MST 109	Elementary Probability & Stats	4.00 A	16.000
PHY 109	Astronomy	4.00 A	16.000
Ehrs: 16.00 GPA-Hrs: 16.00 QPts: 64.000 GPA: 4.000			

*Dean's List

Spring 2018

ECN 150	Introduction to Economics	3.00 A	12.000
FYS 100	The Boundaries of American Cit	3.00 A	12.000
PSY 151	Introductory Psychology	3.00 A	12.000
REL 109	Intro to Buddhist Traditions	3.00 A	12.000
SOC 151	Principles of Sociology	3.00 A	12.000
Ehrs: 15.00 GPA-Hrs: 15.00 QPts: 60.000 GPA: 4.000			

*Dean's List

Fall 2018

ACC 111	Intro Financial Accounting	3.00 A	12.000
ECN 210	Inter Math Microeconomics	3.00 A	12.000
MST 113	Multivariable Calculus	4.00 A	16.000
POL 115	Political Theory	3.00 A-	11.010
REL 107	Intro to African Religions	3.00 A	12.000

***** CONTINUED ON NEXT COLUMN *****

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
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Institution Information continued:

Ehrs: 16.00 GPA-Hrs: 16.00 QPts: 63.010 GPA: 3.938
*Dean's List

Spring 2019

ECN 211	Intermed Math MacroEcon	3.00 A-	11.010
ECN 225	Economics of Labor Mkts	3.00 A	12.000
MST 121	Linear Algebra I	4.00 A	16.000
PHI 141	Basic Problems of Philosophy	3.00 A	12.000
POL 114	Comparative Govt & Politics	3.00 A	12.000
Ehrs: 16.00 GPA-Hrs: 16.00 QPts: 63.010 GPA: 3.938			

*Dean's List

Fall 2019

NEU STUDY ABROAD: VIENNA-FLOR HOUSE

ARN 216	Austrian Art and Architecture	3.00 A	12.000
GER 110	Intensive Elementary German	4.00 A	16.000
HMN 190	Contemporary Viennese Exp	1.50 P	0.000
REL 242	Sex, Death and Salvation	3.00 A	12.000
REL 280	God, Gods, and the Ultimate	3.00 A	12.000
Ehrs: 14.50 GPA-Hrs: 13.00 QPts: 52.000 GPA: 4.000			

*Dean's List

Spring 2020

A global public health emergency (COVID-19 pandemic) required significant changes to the delivery of instruction. Some grading options and timelines were adjusted to reflect the tumult of the time.

ECN 215	Advanced Topics in Math'l Econ	3.00 A	12.000
ECN 252	International Finance	3.00 A	12.000
POL 251	Politics of Forced Migration	3.00 A-	11.010
POL 269	TopTheory: Justice	3.00 A	12.000
Ehrs: 12.00 GPA-Hrs: 12.00 QPts: 47.010 GPA: 3.917			

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Fall 2020

ECN 215	Econometric Theory & Methods	3.00 A	12.000
MST 254	Optimization Theory	3.00 A	12.000
POL 222	Urban Politics	3.00 A-	11.010
POL 225	Amer Const Law Sep of Powers	3.00 A-	11.010
Ehrs: 12.00 GPA-Hrs: 12.00 QPts: 46.020 GPA: 3.835			

*Dean's List

Spring 2021

ECN 261	American Economic Development	3.00 A-	11.010
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***** CONTINUED ON PAGE 2 *****



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Politics & Int'l Affairs**Undergraduate Division**

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Page: 2

SUBJ NO.	COURSE TITLE	CRED	GRD	PTS	R
Institution Information continued:					
ECN 326	Theory of Social Choice	3.00	A	12.000	
PHI 220	Logic	3.00	P	0.000	
POL 226	Am Const Law:Civ Rts&Liberties	3.00	A-	11.010	
REL 323	Jesus Traditions	3.00	A	12.000	
Ehrs: 15.00 GPA-Hrs: 12.00 QPts: 46.020 GPA: 3.835					
*Dean's List					
***** TRANSCRIPT TOTALS *****					
Earned Hrs		GPA Hrs	Points	GPA	
TOTAL 116.50		112.00	441.070	3.938	
INSTITUTION					
TOTAL 22.00		0.00	0.000	0.000	
TRANSFER					
OVERALL 138.50		112.00	441.070	3.938	
***** END OF TRANSCRIPT *****					

